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National Defense

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32

PARTS 1 TO 39, VOLUME III
[Contains DAR Sections XVI—XXVI and Appendixes A–R]
Revised as of September 1, 1982

022-003-94809-1

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32

PARTS 1 TO 39,

VOLUME III

[Contains DAR Sections XVI–XXVI
Appendices A–R]

Revised as of September 1, 1982

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

THIS TITLE

Title 32—National Defense is composed of eight volumes. The parts in these volumes are arranged in the following order: Parts 1 to 39 (Volumes I, II, and III), Parts 40 to 399, Parts 400 to 699, Parts 700 to 799, Parts 800 to 999 and Part 1000 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1982, (September 1, 1982 for Parts 1 to 39).

DAR Regulations

The Defense Acquisition Regulations (DAR), formerly known as ASPR, comprise the first 3 volumes of Title 32 organized as follows:

(1) Title 32, Parts 1 to 39, Volume I (containing DAR sections I-VI).

(2) Title 32, Parts 1 to 39, Volume II (containing DAR sections VII-XV).

(3) Title 32, Parts 1 to 39, Volume III (containing DAR sections XVI-XXVI, and Appendices A through R).

DAR Numbering and Terminology

The DAR, as updated in these CFR volumes, contains the material from the July 1976, DAR loose leaf edition, as amended by Defense Procurement Circulars 76-1 through 76-14, and Defense Acquisition Circulars 76-15 through 76-36. The CFR volumes have been reproduced photographically from the DAR edition, and, thus, are identical in content. As such these CFR volumes contain the DAR numbering system which differs substantially from standard CFR numbering.

The terminology used in most CFR volumes is different from that which is used in these editions of the DAR. The following table shows the standard CFR terms with their DAR equivalents.

Codification Systems

CFR	DAR
Subchapter A	Regulation
Part	Section
Subpart	Paragraph
Section	Part

The terms above represent levels or rankings of text. All of the DAR are contained in Subchapter A of Chapter I of Title 32, which is referred to as the "Regulation" in DAR terminology. This Regulation is divided into "Sections". Each section is divided into "parts" and each part is divided into "paragraphs". In the CFR system, the CFR section is the basic unit of text. Consequently, in the DAR the paragraph is equivalent to the CFR section as the basic unit of text.

Within the text of a DAR paragraph, there is not a uniform numbering system for the subdivision of text as there is for text within CFR "sections". However, most DAR paragraphs are consistent within themselves. Users are advised, therefore, to be alert for codification variations in DAR numbering within DAR paragraphs.

A typical reference to DAR material might look like this: "* * * appearing at 3-201.2(a) of this Regulation * * *". In locating this material, you would first remember that the phrase "of this Regulation" means "of this Subchapter A". The first two digits in DAR numbering refer to the section and its part. Therefore, this referenced material will be found in Section III ("3"), Part 2. The next two numbers, "01", refer to a specific DAR paragraph. Often in the DAR, paragraphs are followed by a series of subparagraphs. These subparagraphs further explain the ideas established by the paragraph. The relationship between the subparagraphs and their paragraph is connoted by giving the subparagraphs the number of their paragraph followed by a period and another number. For example, paragraph 3-201, has three subparagraphs. These are numbered 3-201.1, 3-201.2, and 3-201.3. Therefore, the material at 3-201.2(a), is located in one of these subparagraphs, namely 3-201.2. The letter "(a)" which follows all the numbers, refers to a specific unit of text within the subparagraph 3-201.2.

For purposes of numbering, a DAR Appendix is the equivalent of a DAR section. Thus, references to material located in Appendices A through R, Title 32, Parts 1-39, Volume III, are handled in the same manner as DAR sections, except that in place of a first digit, a letter will appear. For example, material at "A-201.2(a)", would be found using the steps discussed above for 3-201.2(a), except that the "section" digit has been replaced by an "A" for Appendix A. For more information regarding the arrangement, numbering, citation, and cross referencing of the DAR, see Section I, Part 1, paragraph 03 (or "1-103") of the DAR itself.

PAGINATION

Each of the three volumes is individually paginated. The page number is centered at the bottom of each page.

The following information should be of use to those users who are familiar with DAR replacement page technique for updating the regulations. The upper left corner (for even pages) and the upper right corner (for odd pages) contains pagination information for each section of the DAR. These page identifiers begin numbering anew with each section. A typical reference might be "3:178." The number to the left of the colon refers to the DAR section. In this case the "3" refers to DAR section III. The number to the right of the colon refers to the page of that DAR section. Thus, the reference 3:178 indicates that the user has the 178th page of DAR section III. Amendments to the July 1976 edition are reflected by a DPC or DAC reference at the top of the page and a vertical line in the side margin of the page.

TABLE OF DAR SECTIONS AND PARTS

Each volume has a table of contents listing all the DAR sections and parts contained in the three volumes. This table of DAR Sections and Parts begins on page x of each volume.

Each of the three volumes also has a table of contents listing the DAR sections (or Appendices) contained in that particular volume and the page where each section (or Appendix) begins. This table appears on page 3 of each volume.

APPENDICES

Users of the DAR will note that former 32 CFR Part 30 was broken down into Appendices A through R. Appendices F, G, J, L, N, O, P, and Q had no previous equivalent in earlier CFR editions. Consistent with its policies regarding publication of tabulated blank forms, the Office of the Federal Register is not reproducing the forms published in Appendix F—Illustrations of Standard and Department of Defense Forms. This edition of Appendix F will not contain the text of any forms. Instead, Appendix F will consist of a list of forms. The Office of the Federal Register is also omitting Appendices N and O. Appendix N is a list of activity address numbers and Appendix O reprints the Cost Accounting Standards Board regulations which are codified in 4 CFR Chapter III.

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An index to the DAR is located at the end of Title 32, Parts 1-39, Volume III. DPCs 76-1 through 76-14 and DACs 76-15 through 76-36 have not been indexed. Entries are by subject matter and references are to DAR section and paragraph.

For this volume, Denise L. Landon was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Reference to ASPR Manuals and Supplements:
ASPR Manual for Contract Pricing (*ASPM No. 1*) (15 Sep 75)
ASPR Small Purchase Manual (*ASPM No. 2*) (31 Mar 76)

ASPR Supplement No. 1 — Guide for Conducting Contractor Procurement System Review (CSPR) (*ASPS No. 1*) (31 Mar 77)
ASPR Supplement No. 2 — Contract File Maintenance, Closeout, and Disposition (*ASPS No. 2*) (1 Apr 70)
ASPR Supplement No. 3 — Property Administration (*ASPS No. 3*) (1 Oct 75)
ASPR Supplement No. 4 — Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists (*ASPS No. 4*) (1 Apr 68)
ASPR Supplement No. 5 — Procurement of Utility Services (*ASPS No. 5*) (1 Oct 74)

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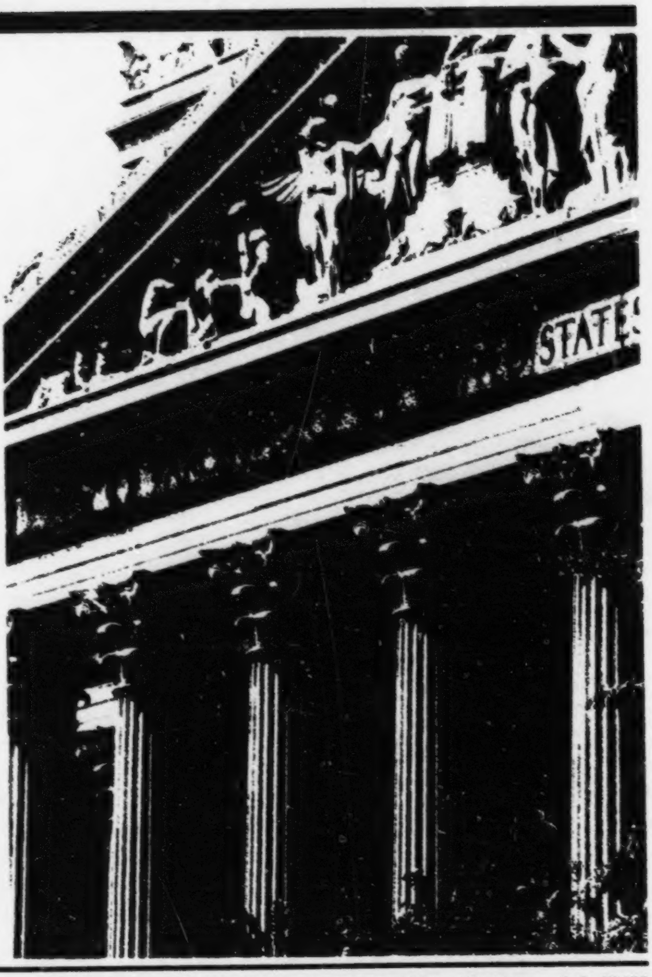

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Title 32—National Defense

Parts 1 to 39, Volume III

(This volume contains DAR Sections XVI—Appendix R)

Editorial Note: The revision date of Title 32, Parts 1 to 39 (3 volumes), was changed from July 1, 1982, to September 1, 1982, to incorporate several Defense Acquisition Circulars published during the month of August, 1982, and effective before July 1, 1982. For publication of subsequent regulations, see the daily Federal Register.

SUBTITLE A—Department of Defense (Continued:)

Section

Chapter I—Office of the Secretary of Defense (Continued:) XVI

Subtitle A—Department of Defense (Continued)

CHAPTER I—OFFICE OF SECRETARY OF DEFENSE (Continued)

Subchapter A—Defense Acquisition Regulations (Continued)

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SECTION XVI

PROCUREMENT FORMS

16-000 Scope of Section. This Section prescribes forms for use in connection with the procurement of supplies and services (see Appendix F for illustrations of these forms). In using these forms for procurement outside the United States, its possessions, and Puerto Rico, contract provisions which are made inapplicable to such procurement by or under authority of ASPR may be deleted.

16-001 Continuation of Forms. Except as may be otherwise indicated with respect to individual forms or groups thereof, all procurement forms may be continued on bond paper. The Continuation Sheet (Standard Form 36) may be used when columns are required. Continuation sheets will be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number of the total pages being prepared, *e.g.*, Page 5 of 15.

PROCUREMENT FORMS

Part 1—Forms for Supply and Services Contracts

16-100 Scope of Part. This Part prescribes forms for use in acquiring supplies and services either by formal advertising or by negotiation (but see also Part 2 of this Section); it is not applicable to specialized acquisition for which other instructions are prescribed by DAR or Departmental procedures (see 1-108).

16-101 Forms for Advertised Supply or Services Contracts (Standard Forms 33, 33A, 32, 36, 30 and 26 and DD Form 1707).

16-101.1 *General.* The following contract forms shall be used in effecting acquisitions of supplies or services by formal advertising:

(i) Solicitation, Offer, and Award (Standard Form 33), including Representations, Certifications, and Acknowledgements (either March 1977 edition or exception approved 9/25/78) for use with Uniform Contract Format in 2-201(a) and 3-501(b) and Information to Offerors or Quoters (DD Form 1707), which may be reproduced locally, unless such action is precluded by Departmental direction;

(ii) Solicitation Instructions and Conditions (Standard Form 33A) (Jan. 1978 edition). In supply contracts substitute the Discounts clause in 7-103.14 and in service contracts substitute the Discounts clause in 7-1902.11 for paragraph 9(b). In both supply and service contracts, substitute the Order of Precedence provision in 7-2003.41 for paragraph 19 and the Late Bids provision in 7-2002.2 for paragraphs 7 and 8. (For negotiated contracts, use the Late Technical Proposals provisions in 7-2002.3, or the Late Proposals provision in 7-2002.4);

(iii) General Provisions (Supply Contract), Standard Form 32, Apr. 1975 edition (to be used only when acquiring supplies). When using this form, the clause in 7-105.1(b) shall be added;

(iv) Any other special terms for the solicitation or additional contract provisions which are prescribed by the DAR or Departmental procedures (see 1-108);

(v) Continuation Sheet (Standard Form 36);

(vi) Amendment of Solicitation / Modification of Contract (Standard Form 30) when needed (see 16-103); and

(vii) Award/Contract (Standard Form 26) when needed.

16-101.2 *Conditions for Use.*

(a) The Solicitation, Offer and Award (Standard Form 33) shall be prepared in accordance with 2-201.

(1) Normally, only two copies of the solicitation will be forwarded to each prospective offeror and each offeror shall be requested to return one signed copy of his offer. In those cases where it is more practical or cost effective, three copies of the solicitation may be forwarded and the offeror requested to return two signed copies. For acquisitions made by the Defense Fuel Supply Center, four copies of the solicitation may be forwarded and the offeror requested to return three signed copies. A DD Form 1707 shall accompany each solicitation.

(b) Standard Forms 32 and 33A and any additional general provisions may be attached to each copy of the Solicitation. Alternatively, Standard Forms 32 and 33A may be incorporated by reference to the form number, name, and edition date; also, additional general provisions (contract clauses) that (i) are authorized in Section VII, (ii) do not contain blanks to be filled in by the offeror and (iii) are not modified, may be incorporated by reference to the ASPR paragraph number, clause title and date. No other contract clauses shall be incorporated by reference but they shall be set forth in full in the solicitation.

(c) Award of contracts shall be accomplished by completing the Award portion of Standard Form 33 and furnishing a copy of the form, so completed, to each successful offeror. Alternatively, such award may be accomplished by completing the Award portion of Standard Form 26 and furnishing it to each successful offeror. Papers previously forwarded to offerors need not accompany the offeror's copy of the Award document. The required use of the Award portion of Standard Form 33 or Standard Form 26 does not preclude the additional use of informal documents, including telegrams, as notices of awards.

(d) Continuation Sheet (Standard Form 36) shall be used when additional space is required for Schedule, Amendment/Modification, or Award; however, where the columns thereon are not required, a blank sheet may be used. The appropriate Procurement Instrument Identification number (see Section XX, Part 2) and page number shall be shown on all continuation sheets.

16-102 Forms for Negotiated Supply or Services Contracts (Standard Forms 18, 26, 30, 32*, 33, 33A* and 36; DD Forms 1665, and 1707.)

*For DAR clause substitutions on Standard Form 32, Apr. 1975 edition, and Standard Form 33A, Jan. 1978 edition, see 16-101.

16-102.1 *Request for Quotation (Standard Form 18), and Information to Offerors or Quoters (DD Form 1707).*

(a) *General.* Standard Form 18 is authorized and DD Form 1707 is prescribed for obtaining price, cost, delivery, and related information from suppliers. DD Form 1707 may be reproduced locally, unless such action is precluded by Departmental direction.

(b) *Conditions for Use.*

(1) *Acquisitions in Excess of $10,000.* Standard Form 18 is authorized and DD Form 1707 is prescribed for use in negotiated acquisitions in excess of $10,000 when it appears reasonably certain that the acquisition will be consummated by (i) a fixed-price contract involving negotiation or (ii) a cost-reimbursment contract. Continuation Sheet (Standard Form 36) may be used as required. One copy of DD Form 1707, and two copies of Standard Form 18 shall be sent to each prospective supplier and he shall be requested to return one signed copy of his quotation.

(2) *Acquisitions Not in Excess of $10,000.* Standard Form 18 may be used for simplified purchases made in accordance with Section III, Part 6, when written solicitations (other than by telegram) of quotations are required. (See 3-608.2(c)(1) for use of DD Form 1155 as a request for quotations.) Two copies of Standard Form 18 shall be sent to each prospective supplier and he shall be requested to return only one signed copy. A quotation submitted on this form or on DD Form 1155 is not to be construed as an offer which can be accepted by the Government to form a binding contract. Therefore, issuance by the Government of a purchase order pursuant to a supplier's quotation does not constitute a contract, but the purchase order is an offer by the Government to the supplier to

buy certain goods or services upon specified terms and conditions. DD Form 1707 shall not be used for procurements not in excess of $10,000.

(3) Pending the publication of a new edition of the form, the solicitation representation prescribed by 7-2003.74 shall be added as Item 4 of the Representations and Certifications of Standard Form 18.

16-102.2 *Award/Contract* (*Standard Form 26*).

(a) *General.* Standard Form 26 is designed for use primarily when entering into contracts resulting from negotiation where the signature of both parties on a single document is appropriate. (See also 16-102.3 for use of this form as an award pursuant to receipt of a firm offer on Solicitation, Offer, and Award (Standard Form 33) and 3-410.2(a) for use of this form to place orders against basic ordering agreements.)

(b) *Conditions for Use.* This form, in conjunction with appropriate General Provisions as provided in (c) and (d) below, is prescribed for use in negotiated contracts except:

- (i) contracts for which Solicitation, Offer, and Award (Standard Form 33) is used in accordance with 16-102.3;
- (ii) contracts for the construction, alteration, or repair of buildings, bridges, roads or other kinds of real property;
- (iii) procurements for which special contract forms are prescribed by ASPR (for example, 16-503, 16-504 and 16-505); and
- (iv) procurements for which purchase order and related forms are authorized by Part 3 of this Section.

(c) *Negotiated Supply and Services Contracts.*

(1) Except as provided in (b) above, Award/Contract (Standard Form 26) shall be used with Standard Form 32 (General Provisions (Supply Contract)) (see 16-205) or with required nonpersonal services clauses, and any other forms containing contract provisions which are prescribed by ASPR or Departmental procedures, for entering into negotiated fixed-price contracts to which Section VII, Part 1, is applicable.

(2) Except as provided in (b) above, Award/Contract (Standard Form 26) shall be used with other forms containing contract provisions which are prescribed by ASPR or Departmental procedures for entering into negotiated cost reimbursement type contracts to which Section VII, Part 2, is applicable.

(d) *Special Negotiated Contracts.* Award/Contract (Standard Form 26) may be used for special procurements where clauses other than those on Standard Form 32 have been authorized. For example, cost-reimbursement research and development contracts with clauses prescribed by Section VII, Part 4; contracts for stevedoring services; time and materials contracts; personal and professional services contracts; and contracts for instruction of military personnel at educational institutions.

(e) *Corporate Certificate.* Where a corporate certificate is considered necessary or desirable, it may be executed on a typed sheet, identified by Procurement Instrument Identification (contract) number, and attached to Award/Contract (Standard Form 26).

(f) *Schedule and Continuation Sheet.* Standard Form 36 (Continuation Sheet) shall be used for the Schedule and Continuation Sheets (see 16-101.2(d)).

(g) *Effective Date.* The effective date shown on the Award/Contract (Standard Form 26) is the date agreed to by the contracting parties as the date on which the terms and conditions of the contract take effect. This date may be different from the signature dates and is used for such purposes as establishing a base time from which delivery schedules may be established (see 1-305.3(a)(ii)). The effective date does not necessarily determine the fund obligation date which normally is the date when a mutually binding agreement is reached (see 21-130). If referred to in the contract Schedule, the effective date shall always be identified as the "effective date" and should not be later than any performance or delivery dates set forth in the Schedule. The effective date should be filled in prior to forwarding for contractor signature.

16-102.3 *Solicitation, Offer, and Award (Standard Form 33).*

(a) *General.* Except for acquisition of subsistence, and for acquisition outside the United States, its possessions, and Puerto Rico (see 16-102.4), the following forms are prescribed for use under the conditions set forth in (b) below in effecting negotiated fixed-price acquisition of supplies or nonpersonal services:

(i) Solicitation, Offer, and Award (Standard Form 33), including (Representations, Certifications, and Acknowledgements), and Information to Offerors (DD Form 1707);
(ii) Solicitation Instructions and Conditions (Standard Form 33A)*;
(iii) General Provisions (Supply Contract) (Standard Form 32)* (only when acquiring supplies);
(iv) any other forms containing contract provisions which are prescribed by DAR or Departmental procedures;
(v) Continuation Sheet (see 16-101.2(d));
(vi) Amendment of Solicitation/Modification of Contract (Standard Form 30) when needed (see 16-103); and
(vii) Award/Contract (Standard Form 26) when needed.

---

*For DAR clause substitutions on Standard Form 32, Apr. 1975 edition, and Standard Form 33A, Jan. 1978 edition, see 16-101.

(b) *Conditions for Use.*

(1) The above forms (together with authorized contract provisions) shall be used in connection with the negotiation of fixed-price contracts for supplies or nonpersonal services when it appears desirable to commence negotiations by soliciting written offers which, if there is written acceptance by the Government, would create a binding contract without further action. Standard Form 33A and DD Form 1707 shall be used as set forth in 16-101.2(a). Prospective offerors shall be requested to return not more than two signed copies of their offers.

(2) When offers have been submitted on Solicitation, Offer, and Award (Standard Form 33) and it is in the interest of the Government and is in accordance with 3-805.1(a)(v) to accept a prospective contractor's offer without further negotiation, price and other factors considered, award may be made by use of the Award portion of Standard Form 33. In such instances, the contract will consist of the appropriate documents listed in (a) above. Alternatively, award may be made by use of the Award portion of Standard Form 26 (see 16-102.2).

(3) When an offer submitted by a prospective contractor leads to further negotiation, the resulting contract shall be prepared as a bilateral contract document on Award/Contract (Standard Form 26) in accordance with 16–102.2 except that:

(i) if the circumstances are such that the prospective contractor can amend his offer in writing to reflect any necessary changes, the amended offer may be accepted by use of the Award portion of Solicitation, Offer, and Award (Standard Form 33) or the Award portion of Award/Contract (Standard Form 26); or

(ii) if all the terms and conditions agreed to as a result of such further negotiation are specifically and clearly set forth in identifiable writings but such writings are unsuitable or too voluminous to permit acceptance of the amended offer by use of the Award portion of either Standard Form 33 or 26 and if the circumstances of the procurement require prompt acceptance of the amended offer, such modified offer may be accepted by the issuance of a notice of award in substantially the format set forth below.

In cases of (i) above, the use of the Award portion of Standard Form 33 or 26 does not preclude the additional use of informal documents, including telegrams, as notices of award. In cases within (ii) above, all of the terms and conditions of the contract thereby created shall be, without change or modification, promptly consolidated into a bilateral contract document using Award/Contract (Standard Form 26).

NAME AND ADDRESS OF PURCHASING OFFICE

DATE:......................

NAME AND ADDRESS OF CONTRACTOR

CONTRACT No. ....

Gentlemen:

Your offer dated ...., (in response to Solicitation No. ...., dated ....) as amended by [list and identify all documents or portions thereof, such as letters, telegrams, and printed matter, from the prospective contractor and the Government, which together set forth the terms and conditions of the contract] for the furnishing of ...., at a total price of $........................, is accepted and award is hereby made.

A contract in the usual form, dated and numbered as set forth above, incorporating all the terms and conditions of the contract hereby created is being prepared and will be forwarded to you in the near future.

This contract is authorized by and has been negotiated pursuant to 10 U.S.C. 2304(a) ( ).

UNITED STATES OF AMERICA

By:...... ....

(Name) Contracting Officer

(4) Standard Forms 32 and 33A, if applicable, and any other general provisions may be attached to each copy of the Solicitation, Offer, and Award (Standard Form 33). Alternatively, Standard Forms 32 and 33A may be incorporated by reference to the form number, name, and edition date; also, additional general provisions (contract clauses) that (i) are prescribed in Part 1 of Section VII and (ii) do not contain blanks to be filled in, may be incorporated by

reference to the DAR paragraph number, clause title and date. No other contract clauses shall be incorporated by reference but they shall be set forth in full in the solicitation.

(5) When a cost breakdown is required in connection with an offer, the DD Form 633 shall be used as provided in 16-206.

(6) This paragraph does not preclude the use of the purchase order forms prescribed in Section XVI, Part 3.

(7) When it is necessary to issue an amendment to a solicitation for offers, Standard Form 30 shall be used.

16-102.4 *Solicitation, Offer, and Award (Overseas) (DD Form 1665).*

(a) *General.* The following forms are prescribed for use outside the United States, its possessions and Puerto Rico in effecting negotiated fixed-price contracts for supplies or services:

(i) Solicitation, Offer, and Award (Overseas) (DD Form 1665), substituting the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 for paragraphs 7 and 8;

(ii) for contracting offices in the North Atlantic—Mediterranean area, including all of Europe, contract clause forms issued by USEUCOM (see 1-104(b)); for overseas contracting offices not under USEUCOM, any other forms containing contract provisions which are prescribed by DAR or Departmental procedures;

(iii) Continuation Sheet (Standard Form 36) (see 16-101.2(d)); and

(iv) Amendment of Solicitation / Modification of Contract (Standard Form 30) when needed (see 16-103).

(b) *Conditions for Use.* The conditions for use of DD Form 1665 are the same as for Standard Form 33 (see 16-102.3(b)).

(c) *Optional Use of Uniform Contract Format.* The Uniform Contract Format (see 3-501(b)(1)) may be used with the DD Form 1665.

16-103 Amendment of Solicitation / Modification of Contract (Standard Form 30).

(a) *General.* This paragraph prescribes a single form for (i) amendment of solicitations (whether advertised or negotiated), and (ii) modification of contracts including purchase and delivery orders entered into on DD Form 1155 (see 3-608.4).) Use of this form is optional for amendment of solicitation for the acquisition of construction and price change modification of contracts for the acquisition of petroleum products as a result of economic price adjustment.

(b) *Conditions for Use.* This form shall be used for:

(i) any amendment to a solicitation;

(ii) any change order issued pursuant to the Changes clause of a contract;

(iii) any other unilateral contract modification (see 1-201.2) issued pursuant to a contract provision authorizing such modification without the consent of the contractor;

(iv) administrative changes such as the correction of typographical mistakes, changes in the paying office and changes in accounting and appropriation data;

(v) supplemental agreements as defined in 1-201.18; and

(vi) provisioned items orders.

(c) *Continuation of Amendments / Modifications*. Standard Form 36 or a blank sheet of paper may be used for continuation of amendments / modifications (see 16-101.2(d)).

(d) *Modification of Construction Contracts*. When used to modify a contract for construction, this form may be altered to provide for the contractor's written acknowledgment of the change orders. (See 16-405.4 for instructions relative to modifying a contract for construction.)

(e) *Identification of FMS Contract Modifications*. If the modification adds FMS requirements, identify the modification by clearly stamping or otherwise indicating "*FMS Requirement*" on the face of the modification and specify within the modification each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA, for such added FMS items.

16-104 Instructions for Preparation of Forms for Advertised and Negotiated Supply and Services Contracts (Standard Forms 33, 26, 30, and 18).

16-104.1 *General*. The following information is applicable to all of the forms discussed in this paragraph.

(a) *Codes*. Entries in the code blocks provided on the forms are required if administration is assigned (i) to DCAS, or (ii) to a non-DCAS office listed in the DoD Directory of Contract Administration Services components and the contractor is located in the continental United States or Canada. The organizational entity address codes to be entered on contracts are as follows:

(1) *Codes published in the DoD Activity Address Directory (DODAAD), DoD 4000.25D*. These codes are to be used for Government entities. However, the "Ship To / Mark For" block shall use a DODAAD code for non-Government entities for shipments to satisfy MILSTRIP requisitions for that non-Government entity.

(2) *Codes published in Handbook of Non-Government Organizations for MILSCAP, H8-1/H8-2 Handbooks*. These codes will be used for all non-Government entities, except for the condition as noted in (i) above.

(b) *Dates*. All date entries shall be constructed with a 2-position numeric year; 3-position alpha month, and a 2-position numeric day; *e.g.*, 71NOV06.

(c) *Self-Explanatory Blocks*. Self-explanatory blocks are not discussed.

(d) *Uniform Contract Format (UCF)*.

(1) A Uniform Contract Format (UCF) consisting of (i) a standard table of contents and (ii) a standard location for all provisions under applicable section headings is set forth in 2-201(a) and 3-501(b). The table of contents is required in written solicitations and contracts (excluding orders under basic ordering agreements). Placement of provisions under applicable section headings is required in written solicitations, solicitation amendments, awards under solicitations, contracts (including contracts under basic agreements), and contract modifications.

(2) When a particular Section or Sections are not necessary (as for example, Sections C and D are not necessary because part numbers, NSNs, brief item descriptions and/or preservation and packaging information in Section B provide sufficient descriptive details), the unnecessary Sections should not be checked.

(e) *Identification of Contract Type*. When forms discussed in this paragraph are prepared for execution as contract documents, or when the Standard Form 30 is being used as a contract modification document, the type of contract shall be identified by inserting in the title block the alpha code corresponding to the types described as follows:

Code	*Type of Contract*
A	Fixed-Price Redetermination, Type A
B	Fixed-Price Redetermination, Type E
C	Fixed-Price Redetermination, Other
J	Firm Fixed-Price
K	Fixed-Price with Economic Price Adjustment.
L	Fixed-Price Incentive (with performance incentive)
M	Fixed-Price Incentive (without performance incentive)
R	Cost-Plus Award Fee
S	Cost
T	Cost-Sharing
U	Cost-Plus-Fixed Fee
V	Cost-Plus-Incentive Fee (with performance incentive)
W	Cost-Plus-Incentive Fee (without performance incentive)
Y	Time and Materials
Z	Labor-Hour

16–104.2 *Solicitation, Offer, and Award* (*Standard Form 33*). Instructions for block entries are as follows:

Block No.	*Title and/or Instructions*
2	*Solicitation No.*—For Small Business Restricted Advertising and other types of restricted advertising, the box "Advertised (IFB)" shall be checked after insertion of the appropriate Procurement Instrument Identification number.
7	*Issued by*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.
9	*Time and Place for Receipt of Offers.* Enter the prevailing local time and the date of opening, and the exact location of the depository, including the room and building number. (See 2–202.1 concerning bidding time for formally advertised procurement.) Timing by the 24–hour clock shall not be used except where customary in the industry.
10–15	The UCF table of contents (see 2–201(a) and 3–501(b)) with the applicable sections checked, shall be set forth immediately below Block 9 so as to replace the word "Schedule" and to replace Blocks 10 through 15, including the headings thereof:
17	*Offeror Name and Address*—(i) If not entered by the offeror, enter in the first code block the code for the offeror. (ii) If it is known that all the work covered by the contract is to be performed at an address different than the address represented by the offeror's code, and any contract administration function will be required at that facility, enter in the facility code block the code for that facility, *i.e.*, H8–1 / H8–2 code for a non-Government entity or DODAAD code for a Government entity

Block No.	*Title and/or Instructions*
	(DODAAD codes shall be used only to indicate "performed at" locations for contracts specifying services at a Government location). If it is known that multiple facilities are involved (*i.e.*, when the work covered by the contract is performed both at the offeror's address and one or more other facilities or when all the work is to be performed at two or more facilities other than the offeror's address), indicate the codes for all facilities at which work is to be performed, including the offeror's code if work is to be performed at that address, in Section K (Contract Administration Data) and mark the facility code block with "See Schedule." For contracts specifying services which will be performed at a location other than the offeror's address, the locations shall be indicated as required above.
25	Although Small Business Restricted Advertising and other types of restricted advertising are to be treated as advertised procurements for the purpose of classification in Block 2, such procurements are negotiated procurements (see 1–706.2), and require the insertion of the appropriate negotiation authority in Block 25.
26	*Administered By*—In the top left-hand corner, insert the name and address of the contract administration office. In the lower right-hand corner, insert the pre-award survey serial number if survey was performed; if "none," so state. In lower left-hand corner, insert Criticality Designator Code (see 25–103).

16–104.3 *Award/Contract* (*Standard Form 26*). Instructions for block entries are as follows:

Block No.	*Title and/or Instructions*
2	*Effective Date*—Not applicable to formal advertising. For negotiated procurements, see 16–102.2(g).
5	*Issued by*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.
6	*Administered By*—In the top left-hand corner, insert the name and address of the contract administration office. In the lower right-hand corner, insert the pre-award survey serial number if survey was performed; if "none," so state. In the lower left-hand corner, insert Criticality Designator Code (see 25–103).
8	*Contractor Name and Address*—(i) Enter the full business name and address of the contractor. Enter in the first code block the code of the contractor. (ii) If it is known that all the work covered by the contract will be performed at an address different than the address represented by the contractor's code, and any contract administration function will be required at that

Block No.	*Title and/or Instructions*
	facility, enter in the facility code block the code for that facility, *i.e.*, H8–1/H8–2 code for a non-Government entity or DODAAD code for a Government entity (DODAAD codes shall be used only to indicate "performed at" locations for contracts specifying services at a Government location). If it is known that multiple facilities are involved (*i.e.*, when the work covered by the contract is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address), indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is to be performed at that address, in Section K (Contract Administration Data) and mark the facility code block with "See Schedule." For contracts specifying services which will be performed at a location other than the contractor's address, the locations shall be indicated as required above.
9	*Discount for Prompt Payment*—Percentages will be expressed in whole numbers and decimals; *e.g.*, 3.25%—10 days, 0.50%—20 days.
10	*Ship To / Mark For*—Multiple delivery points shall be shown in Section H of the UCF and this block annotated to that effect. Any "Mark For" in-the-clear and DODAAD or H8–1/H8–2 coded address for ultimate consignee shall be entered in this block.
14	*Accounting and Appropriation Data*—If multiple accounting classifications are applicable, see 20–304.2(b) and (c).
15–20	When the contract does not otherwise contain a UCF table of contents, the UCF table of contents set forth in 2–201(a) and 3–501(b) with the applicable sections checked, shall be set forth immediately below Block 14 so as to replace Blocks 15 through 20, including the headings. Section entries may commence immediately below the table of contents or on the first page of the Continuation Sheet (Standard Form 36). In either event, all provisions shall be located under applicable UCF section headings.
15	*Item No.*—See Section XX, Part 3.
16	*Supplies/Services*—When used as an acceptance, only the item numbers of the solicitation need be set forth. Any modifications made by the offeror to a solicitation which are accepted by the Government will be set forth. When entries in addition to item numbers are set forth, they shall be set forth under appropriate UCF section headings (see 2–201(a) and 3–501(b)) from the applicable solicitation document. A UCF table of contents shall not be set forth when the form is used as an acceptance.
22	If the form is being used as a negotiated bilateral contract pursuant to receipt of quotations on Request for Quotations (Standard Form 18) or informal means, and subsequent negotia-

Block No.	Title and/or Instructions
	tions, if any, the box shall be checked and contractor shall be required to sign this document and return the prescribed number of copies to the issuing office, but see 1–706.6(d)(4), 1–706.7(e)(4) and 1–804.2(c)(4) when the form is being used for an acceptance of an offer for a set-aside portion of a procurement.
26	If this form is being used as an acceptance (award) pursuant to receipt of a firm offer on Solicitation, Offer, and Award (Standard Form 33), the box shall be checked and contractor will not be required to sign this document. When it is being used for acceptance of an offer for the set-aside portion of a procurement (see 1–706.6(d)(4), 1–706.7(e)(4) and 1–804.2(c)(4)) reference to the applicable solicitation and the company's offer letter shall be indicated and copies shall be attached.

16–104.4 *Amendment of Solicitation / Modification of Contract* (*Standard Form 30*). Instructions for block entries are as follows:

Block No.	Title and/or Instructions
1	*Amendment / Modification No.*—See Section XX, Part 2.
2	*Effective Date*—For an amendment of a Solicitation, or for a Change Order or an Administrative Change, the effective date shall be the issue date of such amendment, Change Order, or Administrative Change. For a Supplemental Agreement, the effective date shall be the date agreed to by the contracting parties. See 16–102.2(g).
5	*Issued by*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.
7	*Contractor Name and Address*—For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a prior modification.
8	Check the appropriate block and in the corresponding blanks insert number and date of original Solicitation, Contract, or Order.

Block No.	*Title and/or Instructions*
10	For those awards utilizing an Accounting Classification Reference Number (ACRN) pursuant to ASPR 20-308.1, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries: *ACRN: accounting classification* *Net increase $* .... *ACRN: accounting classification* *Net decrease $* .... **NOTE:** Should changes to multiple ACRN's occur on a modification which cannot be placed in Block 10, an asterisk and the words "*See Continuation Sheet*" should be inserted.
12	Amendments or modifications shall be set forth under appropriate UCF section headings from the applicable solicitation or contract document. A UCF table of contents shall not be set forth. Indicate the impact of the modification on the overall total contract price by inserting one of the following entries: *Total contract price increased by $*............. . *Total contract price decreased by $*............. . *Total contract price unchanged.*
13	If the modification is a Change Order (11(a)) or Administrative Change (11(b)), the first box in this block shall be checked, and the contractor's signature will not be required. If the modification is a Supplemental Agreement (11(c)), contractor's signature will be required, the second box shall be checked and the number of copies to be returned to issuing office shall be inserted, but see 1-706.6(d)(3), 1-706.7(e)(3), and 1-804.2(c)(3) when the form is being used for acceptance of an offer for a set-aside portion of a procurement.
17	Contracting Officer's signature is not required when amending a solicitation.

16-104.5 *Request for Quotations* (*Standard Form 18*). Instructions for block entries are as follows (applicable only when UCF is used):

Block No.	*Title and/or Instructions*
11-16	The UCF table of contents set forth in 2-201(a) and 3-501(b) with the applicable sections checked, shall be set forth immediately below Block 10 so as to replace the word "Schedule" and replace Blocks 11 through 16, including the headings. Section entries may commence immediately below the Table of Contents or they may commence on the first Continuation Sheet (Standard Form 36). In either event, all provisions shall be located under applicable UCF section headings.

Part 2—Additional Forms for Negotiated Contracts

16-200 Scope of Part. This Part describes additional forms for use where appropriate in conjunction with negotiated contracts for supplies or services.

16-201 Reserved.

16-202 Reserved.

16-203 Reserved.

16-204 Reserved.

16-205 General Provisions—Fixed-Price Supply Contracts (Standard Form 32).* Any negotiated contract to which Section VII, Part 1, is applicable will include Standard Form 32. The addition of other clauses set forth in Section VII, Part 1, or of other clauses not inconsistent with DAR, shall be accomplished by including such clauses as "Additional General Provisions" numbered consecutively. The deletion or modification of clauses contained in the "Additional General Provisions" shall be accomplished by appropriate reference or provision in an Alterations in Contract clause. These instructions must be read in conjunction with Section VII, Part 1, to make certain that current clauses are in use at all times.

*For DAR clause substitutions on Standard Form 32, Apr. 1975 edition, and Standard Form 33A, Jan. 1978 edition, see 16-101.

16-206 Contract Pricing Proposal Forms.

16-206.1 General.

(a) The DD Form 633 shall be used, except for negotiated final overhead rates and termination settlements, whenever cost or pricing data (see 3-807.7) is required. The data requirement, in 3-807 and 7-104.42, is in connection with the pricing of contracts, subcontracts (including prospective subcontracts), and changes or modifications to contracts or subcontracts. In accordance with the provisions of 3-807.7(b), the DD Form 633-7 shall be submitted whenever exemption from such cost or pricing data requirements is claimed for contracts or subcontracts by reason of established catalog or market prices (see 3-807.7(b)) or prices set by law or regulation.

(b) The purpose of DD Form 633 is to provide a vehicle whereby the offeror submits to the Government a pricing proposal of estimates and/or incurred costs by contract line item with supporting information, adequately cross-referenced, suitable for detailed analysis. Supporting cost element breakdowns must be obtained for each proposed line item. When more than one contract line item is proposed, summary total amounts, by cost element, covering all proposed line items, should also be obtained.

(c) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921-1 to support the DD Form 633. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army - AMCP 715-8, Navy - NAVMAT P5241, and Air Force - AFLCP/AFSCP 800-15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921-1.

(d) DD Form 783 (Royalty Report (Foreign and Domestic)) is approved for use as the separate schedule required by DD Form 633.

16-206.2 *Contract Pricing Proposal Supporting Schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

16-207 Reserved.

16-208 Weighted Guidelines Profit/Fee Objective (DD Form 1547).

16-208.1 *General.* Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate calculation of the Weighted Guidelines Profit/Fee Objective (see 3-808.2).

16-208.2 *Conditions for Use.* DD Form 1547 may be used in conjunction with the Record of Price Negotiation required by 3-811(b), *provided* that the rationale used in assigning the various rates is fully documented.

Part 3—Purchase and Delivery Order Forms

16-300 Scope of Part. This Part prescribes forms for use (i) when purchases are authorized or required to be made by the purchase order or imprest fund method, (ii) as delivery orders, and (iii) as order against basic ordering agreements.

16-301 Receipt for Cash—Subvoucher (Standard Form 1165). Standard Form 1165 may be used in connection with procurements by the imprest fund (petty cash) method in accordance with 3-607.

16-302 Purchase Order — Invoice — Voucher (Standard Form 44). Standard Form 44 is authorized for use to accomplish small purchases in accordance with 3-608.9.

16-303 Order for Supplies or Services/Request for Quotations, (DD Forms 1155, 1155r, 1155r-1, and 1155c-1). Order for Supplies or Services/Request for Quotations, DD Form 1155 series, shall be used to accomplish small purchases in accordance with 3-608 and 16-402 and Blanket Purchase Agreements in accordance with 3-605, and may be used to place calls against Blanket Purchase Agreements in accordance with 3-605.5 and orders against basic ordering agreements in accordance with 3-410.2(a). Pending revision of the 1 MAR 1978 edition of DD Form 1155r, the *Fast Payment Procedure* clause in 7-104.84 shall be substituted for paragraph 15 of the form.

PROCUREMENT FORMS

Part 4—Construction and Architect-Engineer Forms and Formats

16-400 Scope of Part. This Part prescribes forms and formats for use in construction and architect-engineer contracts and for dismantling, demolition and removal contracts.

16-401 Advertised Construction Contract Forms.

16-401.1 *General.* The following forms are prescribed for use in formally advertised construction contracts where the work is to be performed in the United States, its possessions, or Puerto Rico:

(i) Standard Form 19—Invitation, Bid and Award (Construction, Alteration or Repair). Pending revision of the July 1973 edition, the following provision shall be substituted for paragraph 6 of Standard Form 19:

> **PAYMENTS TO CONTRACTOR (1976 OCT)**
>
> Progress payments equal to the value of the work performed may be made monthly or at more frequent intervals as determined by the Contracting Officer on estimates approved by him. Upon payment therefor, title to the property shall vest in the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made. The Contractor will notify the Government when all work is complete. Final payment will be made after final acceptance.
>
> (End of provision)

The Convict Labor clause in 7-104.17 shall be substituted for paragraph 10, and the following paragraphs shall be deleted:
13 Examination of Records by Comptroller General,
14 Utilization of Small Business Concerns, and
15 Utilization of Minority Business Enterprises.

(ii) Standard Form 19-A—Labor Standards Provisions—Applicable to Contracts in excess of $2,000. (For construction contracts in excess of $2,000 for work in U.S. possessions and Puerto Rico, see 18-703.2.) The following revisions shall be made in the November 1972 edition on the form:
the Davis-Bacon Act clause in 7-602.23(a)(i) shall be substituted for paragraph 1;
the Apprentices and Trainees clause in 7-602.23(a)(iii) shall be substituted for paragraph 3;
the Payrolls and Basic Records clause in 7-602.23(a)(iv) shall be substituted for paragraph 4; and
the Withholding of Funds clause in 7-602.23(a)(vi) shall be substituted for paragraph 6.

(iii) Standard Form 19-B—Representations and Certifications (Construction and Architect-Engineer Contract).

(iv) Standard Form 20—Invitation for Bids (Construction Contract).

(v) Standard Form 21—Bid Form (Construction Contract).

(vi) Standard Form 22—Instructions to Bidders (Construction Contract). The Late Bids provision in 7-2002.2 shall be substituted for paragraphs 7 and 8 of Standard Form 22.

(vii) Standard Form 23—Construction Contract.

(viii) Standard Form 23-A—General Provisions (Construction Contract). The following revisions shall be made in the April 1975 edition of the form:
the Payments to Contractor clause in 7-602.7 shall be substituted for paragraph 7;
the Shop Drawings clause in 7-602.54 shall be substituted for paragraph 15;
the Convict Labor clause in 7-104.17 shall be substituted for paragraph 28;
the Buy American Act clause in 7-602.20 shall be substituted for paragraph 24; and
the appropriate Federal, State and Local Taxes clause in 7-103.10 shall be substituted for paragraph 31.

(ix) Standard Form 30—Amendment of Solicitation / Modification of Contract. (The use of this form is optional for amendment of a solicitation.)

(x) *Continuation Sheet*. There is no prescribed form of Continuation Sheet for construction contracts. A blank sheet, incorporating (A) the contract or invitation number, as appropriate; (B) page number and number of pages; and (C) name of bidder or contractor may be used for this purpose. Standard Form 36, Continuation Sheet (Supply Contract), shall not be used for construction contracts.

16-401.2 *Conditions for Use*.

(a) *Contracts Estimated Not To Exceed $2,000*. Standard Forms 19 (see 16-401.3(c), (d) and (f)), and 19-B shall be used for those contracts executed as a result of formal advertising. Standard Form 22 also may be used. Where it is indicated that the low bid may exceed $2,000, Standard Form 19-A, as modified in 16-401.1(ii), should be attached, the specifications should include the appropriate wage rate determination.

When Standard Form 19 is used, progress payments may be made if the period of performance is greater than one month. However, if the period of performance is less than one month or the total contract amount does not warrant progress payments, a single payment may be made, in which case the contracting officer may indicate completion and final acceptance of the contract work by a stamped and signed statement to that effect on the face of the standard form and forwarding it to the disbursing officer for payment. The following statement may be used for this purpose:

> I certify that the work and services furnished hereunder have been completed, inspected, accepted as conforming to the contract requirements, and the amount is correct and proper for payment.
>
> ....
>
> *Signature and Title of Certifying Officer*

(b) *Contracts Estimated To Exceed $2,000 But Not To Exceed $10,000*. Standard Forms 19 (see 16-401.3(c), (d) and (f)), 19-A, as modified in 16-401.1(ii), and 19-B may be used for these construction contracts executed as a result of formal advertising. Standard Form 22 also may be used. In the alternative, the forms prescribed in (c) below may be used. The additional language set forth in (a) above shall be inserted in the bid portion of Standard Form 19 prior to issuance of the invitation. If the successful bid exceeds $10,000, the contract may be executed on the Standard Form 19 but it will be necessary to add the clauses in:

7-103.10(a) (*Federal, State, and Local Taxes*),
7-103.18(a) (*Equal Opportunity*) unless exempted by 12-805,
7-104.14(a) (*Utilization of Small Business Concerns*),
7-104.15 (*Examination of Records by Comptroller General*), and
7-104.36(a) (*Utilization of Minority Business Enterprises*).

A statement to this effect should be included in the invitation; see 2-201(b)(xlvi). If there are factors which create a good possibility that the successful bid will exceed $10,000, a contracting officer should use the forms prescribed in (c) below for contracts estimated to exceed $10,000.

(c) *Contracts Estimated To Exceed $10,000*. Standard Forms 19-A, 19-B, 20, 21, 22, 23, and 23-A shall be used for these construction contracts executed as a result of formal advertising. Strict compliance with the following instructions is required.

(i) *Standard Form 19-A*. This form, as modified in 16-401.1(ii), shall be attached to the contract file. **Caution** This form consists of labor standards provisions and shall not be incorporated by reference.

(ii) *Standard Form 19-B*. This form shall be completed by the bidder and shall be attached to the contract file.

(iii) *Standard Form 20* (*Invitation for Bids*). Bidders shall be requested to return not more than two signed copies of their bids. This form shall be completed by inserting the appropriate data on the face of the form. See 18-202 and the following:

(1) *Information Regarding Bidding Material, Bid Guarantee and Bonds*. Insert the following paragraphs on the face of the form for contracts expected to exceed $25,000:

(A) *Bid Bonds*. Each bidder shall submit with his bid a Bid Bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in paragraph 4 of Instructions to Bidders (Standard Form 22) in the form of twenty per cent (20%) of the bid price or $3,000,000 whichever is lesser. The bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents.

(B) *Performance and Payment Bonds*. Within .... days after the prescribed forms are presented to the bidder to whom award is made for signature, a written contract on the form prescribed by the specifications shall be executed and two bonds, each with good and sufficient surety or sureties acceptable to the Government, furnished; namely a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A). The penal sums of such bonds will be as follows:

I. *Performance Bond.* The penal sum of the performance bond shall equal .... per cent (..........%) of the contract price. (Insert the appropriate per cent determined in accordance with the provisions of 10-103.1(a)).

II. *Payment Bond.*

a When the contract price is $1,000,000 or less, the penal sum will be fifty per cent (50%) of the contract price.

b When the contract price is in excess of $1,000,000 but not more than $5,000,000, the penal sum shall be forty per cent (40%) of the contract price.

c When the contract price is more than $5,000,000, the penal sum shall be $2,500,000.

Any bonds furnished will be furnished by the contractor to the Government prior to commencement of contract performance.

(2) *Additional Information for Bidders.*

(A) Additional information and instructions may be given to bidders by using the reverse side of Standard Form 20 or continuation sheets. If used, the reverse side of Standard Form 20, and each continuation sheet used, shall be headed:

READ THE FOLLOWING IN CONJUNCTION WITH THE INSTRUCTIONS TO BIDDERS, STANDARD FORM 22.

(B) When required by the instructions pertaining to the various paragraphs or by the procuring activity, a paragraph shall be inserted advising prospective bidders where complete drawings and specifications may be examined or copies obtained, information as to the charge, if any, to be made for the drawings and specifications, and the conditions under which they may be obtained. If a charge is made for the drawings and specifications, the following sentences shall be included: "Payment will be made by cash or check, or money order and delivered to the Finance and Accounting Officer, ... Checks and money orders should be made payable to the office designated for contract administration."

(C) Paragraph 10 of Standard Form 22, Instructions to Bidders reserves in the Government the right to accept any item or combination of items of a bid, unless precluded by the invitation for bids or the bidder includes in his bid a restrictive limitation. However, in unit price contracts, although the work is set out in "items" for pay purposes, the nature of the work is not normally such that multiple awards can be made on the basis of such items. Accordingly, for purposes of award, the work should be set up on a basis of schedules, each schedule comprised of a group of items which by their nature must be performed under a single contract. Thus, if the entire project is not susceptible of division among several contractors, the work will be set up as a single schedule. Conversely, if the work is of a nature that lends itself to multiple awards, the items will be grouped in separate and distinct schedules, each capable of being awarded as a separate contract.

(D) Where Standard Form 30, Amendment of Solicitation / Modification of Contract, is not used, each amendment to an invitation for bids shall contain a statement as follows:

NOTICE: Bidders are required to acknowledge receipt of this amendment on the bid form, in the space provided, or by separate letter or telegram prior to opening of bids. Failure to acknowledge all amendments may cause rejection of the bid.

(iv) *Standard Form 21* (*Bid Form*) This form shall be furnished to all bidders with the invitation for bids. If the work is divided into separate schedules a bidding schedule showing a breakdown for each such separate schedule should be attached to the invitation for bids and a statement referring thereto made on Standard Form 21.

BIDDING SCHEDULE
(To be attached to bid form when required by the Invitation for Bids)

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Amount

(The following paragraphs shall be printed on the last page of the bidding schedule immediately below the schedule.)

Note: Use additional page if necessary. All extensions of the unit prices shown will be subject to verification by the Government. In case of variation between the unit price and the extension, the unit price will be considered to be the bid.

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro rata basis to every unit price in the bid schedule.

(v) *Standard Form 22* (*Instructions to Bidders*). A copy of this form should accompany each invitation for bids for the information of bidders.

(vi) *Standard Form 23* (*Construction Contract*). A copy of this form should be furnished bidders with the invitation for bids for information. The form shall be completed after award to the acceptable bidder and executed by the parties as the formal contract instrument.

(vii) *Standard Form 23–A (General Provisions).* Additional general provisions or modifications to the General Provisions as provided in Section VII, Part 6, shall be added to this form. Standard Form 23–A revised, as provided in 16–401.1(vii) and with any additional sheets necessary shall be attached to the executed contract. Alternatively, Standard Form 23–A may be incorporated by reference to the form name, number, and edition date; also, additional general provisions (contract clauses) that (i) are prescribed in Section VII and (ii) do not contain blanks to be filled in, may be incorporated by reference to the ASPR paragraph number, clause title and date. General provisions which are inapplicable to a particular procurement or to military procurements generally may be deleted by appropriate reference in an Alterations in Contract clause. No other contract clauses shall be incorporated by reference but they shall be set forth in full in the solicitation (except see 2-201(c)). Provisions relating to the solicitation, as distinct from contract clauses, also must be set forth in full in the solicitation.

(viii) *Specifications.* Specifications consisting of technical and special provisions pertinent to the particular contract and contract drawings shall be attached to the above standard forms to complete the contract.

16–401.3 *Terms, Conditions and Provisions.*

(a) The use of additional contract provisions consistent with those contained in the above forms is authorized, and, where required elsewhere in ASPR, the use of such additional provisions is mandatory.

(b) Changes or additional provisions inconsistent with those contained in the standard forms shall be incorporated when required by ASPR, and may be incorporated when authorized by ASPR, or when approved pursuant to 1–109. A copy of any such approval pursuant to 1–109.2 shall be forwarded by the approving authority to the General Services Administration.

(c) The provisions of (a) and (b) above shall not be construed to authorize the reinstatement in Standard Form 19 of clauses which appear in Standard Form 23–A and which have either been condensed or omitted in the development of Standard Form 19 in the interests of simplification and uniformity. Where such reinstatement is deemed essential, the matter shall be handled as a deviation as provided in 1–109. Deviations are not required for the use with Standard Form 19 of clauses which, are required by law or regulation to be added to Standard Form 19 (see paragraph (d) below and 16–401.2(b)).

(d) The "Disputes" clause of Standard Form 19 may be altered by inserting in the schedule or in the specifications, the following:

> **Alterations.** As used in the "Disputes" clause of the General Provisions "head of the Federal Agency" means the "Secretary" of the (insert name of Military Department). (1959 AUG)

In accordance with 7–104.16, the "*Gratuities*" clause shall be added to Standard Form 19 regardless of the amount of the contract. In accordance with 12–1302(a), the "*Employment of the Handicapped*" clause in 7–103.28 shall be added to Standard Form 19 when the contract is estimated to exceed $2,500.

(e) During a period of national emergency, paragraph (d) (1) of the "Termination for Default—Damages for Delay—Time Extensions" clause of Standard Form 23-A may be changed by deleting the words "unforeseeable causes" in the two places where they appear in the first sentence and substituting therefor the words "causes, other than normal weather".

(f) Deletion or modification of provisions in the above forms shall be accomplished in the "Alterations" paragraph of Standard Form 23, or in an "Alterations" paragraph added in the schedule of Standard Form 19, or in the specifications, as may be appropriate.

16–402 Negotiated Construction Contract Forms.

16–402.1 *General.* Use of the forms prescribed in 16–401 is optional for negotiated construction contracts. When used for negotiated contracts, the forms shall be adapted by lining out or obliterating the words "sealed" and "publicly opened" and adding language to (i) indicate the authority for negotiation, and (ii) replace paragraphs 7 and 8 of the Standard Form 22 with either the Late Technical Proposals provision in 7–2002.3 or the Late Proposal provision in 7–2002.4.

16–402.2 *Contracts Not Exceeding $10,000.*

(a) When procurements are negotiated in accordance with 18–302, either DD Form 1155, revised as indicated below and in 16–303, or Standard Form 19 with the appropriate changes indicated in 16–401.1(i), 16–401.2, 16–401.3, and 16–402.1, shall be used.

(b) Where DD Form 1155 is used for procurement of construction in the United States, its possessions and Puerto Rico, the following shall be accomplished:

(1) The following provisions on DD Form 1155r shall be deleted:

1. Inspection and Acceptance
2. Variation in Quantity
3. Payments
4. Discounts
15. Fast Payment Procedure
16. Service Contract Act of 1965
17. Changes
18. Termination for Default

(2) The following provisions from the reverse of Standard Form 19 shall be added to DD Form 1155r:

1. Changes and Changed Conditions (in the last line of (c), the reference to "Clause 3" shall be changed to "the 'Disputes' clause")
2. Termination for Default—Damages for Delay—Time Extensions (in the last line of (b), the reference to "Clause 3" shall be changed to "the 'Disputes' clause")
4. Responsibility of Contractor
5. Material and Workmanship
6. *Payments to Contractor* clause as revised in 16–401.1(i). However, if period of performance is less than one month or the total amount does not warrant progress payments, a single payment may be made in accordance with procedures in 16–401.2(a).

(3) The applicable additional clauses required by 3-608.2(b)(1) shall be added to DD Form 1155r, and where it is indicated that the low quotation may exceed $2,000, the following shall be accomplished.

(i) Standard Form 19-A, as modified in 16-401.1(ii), shall be attached along with the appropriate wage rate determination.

(ii) In accordance with 10-102.4, the provision in 7-2003.25 shall be added.

(iii) The following language shall be inserted on the face page of the DD Form 1155 prior to issuance:

> "If this quotation exceeds $2,000, the quoter shall furnish with his quotation a bid guaranty in an amount equal to ....% of his quotation; failure to submit the guaranty on time may be cause for rejection of the quotation.
>
> "If this quotation exceeds $2,000, notice to proceed will be issued upon receipt of acceptable payment and performance bonds."

and

(iv) Notice of payment and performance bonds shall be added in accordance with 10-103 and 16-401.2(c)(iii)(1)(B).

(c) Where DD Form 1155 is used for procurement of construction outside the United States, its possessions and Puerto Rico, the following shall be accomplished.

(1) The following provisions on DD Form 1155r-1 shall be deleted:

1. Inspection and Acceptance
2. Variation in Quantity
3. Payments
11. Examination of Records
13. Changes
14. Termination for Default

(2) The provisions from the reverse of Standard Form 19 listed in (b)(2) above also shall be added to DD Form 1155r-1.

(3) The applicable additional clauses required by 3-608.2(b)(2) shall be added to DD Form 1155r-1.

16-402.3 *Cost-Plus-Fixed-Fee Contracts.* When the use of a cost-plus-fixed-fee contract is authorized (18-112) and the appropriate determination has been made (3-405), the format below shall be used, together with the clauses required by 7-605 and 7-606. If the work is to be performed outside the United States, its possessions or Puerto Rico, such contract clauses shall be deleted or modified as necessary to reflect statutory requirements, agreements between the United States and the host foreign country, and agreements between the parties. For labor requirements applicable to overseas contracts, see 18-703.2.

Contract ....

(Negotiated)

COST-PLUS-FIXED-FEE CONSTRUCTION CONTRACT

DEPARTMENT OF THE ....

CONTRACTOR AND ADDRESS:

CONTRACT FOR CONSTRUCTION OF:

LOCATION:
FIXED FEE:
ESTIMATED CONSTRUCTION COST EXCLUSIVE OF FIXED FEE:
PAYMENT: To be made by..
At..

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

This contract is negotiated pursuant
to: ....

COST-PLUS-FIXED-FEE CONSTRUCTION CONTRACT

THIS CONTRACT, entered into this...................day of..................., 19—, by the UNITED STATES OF AMERICA (hereinafter called the Government), represented by the Contracting Officer executing this contract, and

* a Joint Venture consisting of..
*..................................a corporation organized and existing under the laws of the State of..
* a partnership consisting of ....
* an individual trading as..in the City of....................................in the State of .... (hereinafter called the Contractor).

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA
By..
(*Title*)...

(Contractor) ....
By..
(*Title*)..

* Delete all lines which do not apply.

16–403 Architect-Engineer Contracts.

16–403.1 *General.* Architect-Engineer services are professional services for the production of designs, plans, drawings, and specifications, from which the construction of a project will be accomplished. This phase of architect-engineer work is subject to statutory limitations as to the amount to be paid. Supervision and inspection services during construction may also be procured as a part of the professional services furnished by architect-engineers.

16–403.2 *Forms for Architect-Engineer Contracts.* The following forms are prescribed for use in procuring architect-engineer services:

(a) *Architect-Engineer Fixed-Price Contract* (*Standard Form 252*). Instructions for Block entries are as follows:

(1) *Block 5—Project Title and Location.* Include a short description of the construction project and the estimated cost of constructing the facilities at the project. If the space provided is insufficient, include a more detailed description in Appendix A of the contract and list the Appendix A in Block 10.

(2) *Block 6—Contract For (General description of services to be provided).* Include a brief description of the services and state that these services are fully set out in Appendix A (Scope of Work). Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be procured, also clearly specify the date by which such services must be completed and add a statement that the Government may extend such period as provided in the Changes clause of the contract.

(3) *Block 7—Contract Amount.* If the contract is for both design and supervision and inspection services, set out the figures separately.

(b) *General Provisions (Architect-Engineer Contract) (Standard Form 253).* Additional general provisions or modifications of the general provisions as authorized in 7–607, 7–608, 16–403.4 and as required by this paragraph, shall be added to this form. The following changes shall be made in Standard Form 253 under the *Alterations* clause of the contract.

(1) When in accordance with 18–910.1(a)(2), it is desired to acquire exclusive control of data pertaining to design, the clause in 7–607.7(b) shall be substituted for paragraph 7 *Government Rights (Unlimited).*

(2) If the contract does not exceed $10,000, paragraph 16 *Utilization of Small Business Concerns* and paragraph 17 *Utilization of Minority Business Enterprises* shall be deleted.

(3) Substitute the "*Contract Work Hours and Safety Standards Act - Overtime Compensation*" clause in 7–607.11 for paragraph 11.

Standard Form 253 with any additional sheets necessary shall be attached to the executed contract.

(c) *Representations and Certifications (Construction and Architect-Engineer Contract) Standard Form 19–B.*

16–403.3 *Statement of Architect-Engineer Services.* The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of such services inserted in Appendix A (Scope of Work) of the contract. The statement should clearly state the nature and extent of the services in a concise form and include any special services such as the nature and extent of sub-surface exploration prior to designing foundations, etc. A similar statement of supervision and inspection services should be prepared for inclusion in Appendix A (Scope of Work) of the contract if supervision and inspection services are included.

16–403.4 *Terms, Conditions and Provisions.* The use of additional contract provisions, e.g., payment schedule, surveys and subsoil information, and laboratory tests, consistent with those contained in 7–607 and 7–608 are authorized, and, where required elsewhere in ASPR, the use of such additional provisions is mandatory.

16–404 Reserved.

16–405 Miscellaneous Forms.

16–405.1 *Performance Evaluation-Architect-Engineer Professional Services Contractor* (*DD Form 1413*). DD Form 1413 is prescribed for use in accordance with 18–403.4 to provide an orderly and uniform method of determining and recording how effectively architect-engineer professional services contractors meet their contractual commitments. It shall be completed by the cognizant construction activity upon the completion or termination of architect-engineer professional services contracts of $10,000 or more.

16–405.2 *Construction Contractor Performance Evaluation Report* (*DD Form 1596*). DD Form 1596 is prescribed for use in accordance with 18–106.2 to provide an orderly and uniform method of determining and recording how effectively construction contractors meet their contractual commitments.

16–405.3 *Experience Data Forms.*

(a)(1) The Architect-Engineer and Related Services Questionnaire (Standard Form 254, July 1975 edition) is designed to provide for uniform presentation, by architect-engineer firms, of information regarding their general professional qualifications and shall be used in lieu of any corresponding Departmental form. This form shall be used whenever a Construction Activity desires to obtain such information for use in contracting for services of an architect-engineer nature relating to construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. Services related to construction include planning, engineering studies, investigations, development of design, preparation of plans and specifications, and inspection and supervision of work performed during the construction period. (See 18–403.3)

(2) Architect-Engineer and Related Services Questionnaire for Specific Project (Standard Form 255, July 1975 edition) is designed to supplement the Standard Form 254; it will be used to secure additional, specific detailed information on the prospective firms' qualifications for a particular project. This supplemental form shall be used to secure such supplemental data whenever the fee for the project is estimated at $10,000 or more; however, in accordance with Departmental regulations this threshold figure may be increased to $25,000. The form may also be used for those projects for which the fee is estimated at less than $10,000 when it is determined to be in the best interest of the Government by the contracting officer, at his discretion. (See 18–403.3)

(3) Use of the forms prescribed in subparagraphs (a)(1) and (a)(2) above is not required in the procurement of architect-engineer services related to construction, alteration, repair, processing and assembling of vessels, aircraft, or other kinds of personal property.

(b) *Construction Contractor Experience Data* (*DD Form 1072*). This form is designed to assure the uniform submission of experience and organizational data by construction contractors and shall be used in lieu of any corresponding Departmental form.

16–405.4 *Contract Modification Forms.*

(a) *Modifications Pursuant to Provisions of Contract.* Modifications affecting the price or time of performance of a construction contract may be made pursuant to the "Changes" and "Termination for Default—Damages for Delay—Time Extensions" clauses of this contract. In addition, for contracts where the invitations for bids or requests for proposals were issued prior to 1 February 1968, modifications affecting price or time of performance may be made pursuant to the "Changed Conditions" clause included in such contracts. For contracts where the invitations for bids or requests for proposals were issued on or after 1 February 1968, modifications affecting price or time of performance may be made pursuant to the "Differing Site Conditions" clause included in such contracts. In any of the above cases, such modifications shall be accomplished on Standard Form 30. The reason for the proposed modification should be stated *e.g.*, reasons for changes, existence of changed conditions or differing site conditions, causes of delay and excusability. If the modification is pursuant to the "Changes" clause, the details of the change should be set forth. If the time of performance is increased or decreased, the extension or decrease should be stated definitely or a statement made that the time for performance remains unchanged. If the contract price is increased or decreased, the increase or decrease should be stated definitely or a statement made that the contract price remains unchanged. The contractor should be requested to indicate his acceptance on Standard Form 30. Three copies of Standard Form 30 should be sent to the contractor with instructions to return the original and one copy.

(b) *Supplemental Agreements.* Amendment of Solicitation / Modification of Contract (Standard Form 30) shall be used to formalize contract modifications providing for work not within the scope of the contract except that provision shall be made for consent of surety in accordance with the format set forth in 10–111.2.

Part 5—Special Contract and Order Formats and Forms

16-500 Scope of Part. This Part prescribes special formats and forms for procuring certain supplies and services.

16-501 Format for Educational Service Agreements. Educational service agreements authorized by Section XXII, Part 9, shall be on locally reproduced forms consisting of a cover page, general provisions, schedule, and signature page, in the format set forth in this paragraph. The contracting officer may add to the schedule any other provisions necessary to describe the requirements of his Department, as long as such provisions do not contradict any of the general provisions or schedule provisions prescribed by this paragraph or otherwise alter the concept of procuring educational services in the form of standard course offerings at the prevailing rates of the institution.

16-501.1 *Cover Page.* The cover page shall contain the following provisions and necessary information to complete the provisions.

EDUCATIONAL SERVICE AGREEMENT

Agreement No. ....

1. This agreement entered into on the..........day of.........., 19--, between the United States of America, hereinafter called the "Government," represented by the Contracting Officer, and (name of institution), an educational institution located at .... (City) ...., ... (State) ...., herein after called the "Contractor," is for educational services to be Government personnel at the Contractor's institution. The parties intend that the Contractor shall provide instruction with standard offerings of courses available to the public and shall receive payment for services rendered in accordance with the Contractor's schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

2. This agreement may be amended only by mutual consent of the parties.

3. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by Statutes, Executive Orders, or the Armed Services Procurement Regulation; such changes will be evidenced by a modification to this agreement or by a superseding agreement. If the parties fail to agree upon any such change, the Government will terminate this agreement.

4. This agreement shall commence on the effective date above and shall continue until terminated.

5. The estimated annual cost hereunder is $..........; however, this estimate is for administrative purposes only and shall not impose any obligation on the Government to request any services or to make any payment except as provided herein.

6. Requests for services hereunder are negotiated under the authority of 10 U.S.C. 2304(a)(5) when the contractor is in the United States, its possessions, or Puerto Rico, or (6) if elsewhere.

7. Advance payments are authorized by 31 U.S.C. 529i.

8. Submit invoices to: ....(*Name and Address of Activity*)

9. This agreement consists of this cover page, a Schedule of ....(*number of pages*) pages, General Provision of ....(*number of pages*) pages, and a Signature Page.

16-501.2 *Schedule Provisions.*

SCHEDULE PROVISIONS

1. *Ordering Procedures and Services To Be Provided.* **(1968 SEP)**

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision thereof.

(b) The Government will request educational services under this agreement by delivery to the Contractor of [*insert type of request that will be used; e.g., delivery order, official Government* *order, or other written communication*] containing the number of this agreement and designating as students at the Contractor's institution under this agreement one or more Government-selected persons who have already been accepted for admission under the Contractor's usual standards of admission.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment, as regular non-Government students (hereinafter called civilian students).

(d) Upon enrolling each student pursuant to this agreement, the Contractor shall where the resident or nonresident status involves a difference in tuition or fees:

(i) determine the resident or nonresident status of the student and notify the student and the Contracting Officer of such determination, and if there is an appeal of such determination, process the appeal in accordance with the Contractor's standard procedures and notify the appellant of the result; and

(ii) make the above determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student pursuant to this agreement prior to the effective date of a request for such services in the form specified above.

2. *Change in Curriculum. (1968 SEP)*

The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course as offered by the Contractor without the Contractor's consent.

3. *Payment.* (1976 OCT)

(a) The Government shall pay the Contractor the regularly established tuition and fees which the Contractor charges civilian students pursuing the same or similar curricula, except for any tuition and fees which this agreement specifically excludes. The Contractor shall have the right to change any tuition and fees, provided that the Contractor publishes such revisions in a catalog or otherwise publicly announces such revisions and applies them uniformly to all students pursuing the same or similar curricula as Government students enrolled under this agreement. The Contractor shall provide the Contracting Officer notice of such changes prior to their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to Government students.

(c) If the Contractor regularly charges higher tuition and fees for students who are not residents of the state in which the Contractor is located, the Contractor may charge the Government such regularly established nonresident tuition and fees for those Government students who are in fact nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of his residing in the state as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees (which may include (i) penalty fees for late registration or change of course occasioned by action of the Government and (ii) mandatory health fees and health insurance charges) which relate directly to enrollment as a student and are a consequence of his being a student. The Contractor shall not charge the Government for textbooks or any personal services: such as housing, food, or laundry services, unless specifically provided for by the request placed hereunder. The Contractor shall not charge the Government for permit fees, such as vehicle registration or parking fees, unless specifically authorized in the request placed hereunder. In addition to the above, the Contractor shall not make any charge under this agreement for any equipment, refundable deposits, or any items or services (such as computer time) related to student research. However, any flat rate charge applicable to all students registered for research and which appears in the contractor's publicly announced fee schedule shall be chargeable under this agreement.

(e) Normally the Contractor shall not directly charge individual students for application fees or any other fee properly chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor shall reimburse the student in full for any such fee when the Contractor receives payment therefor under this agreement.

(f) for each term in which the Contractor enrolls students under this agreement the Contractor shall submit .... copies of an invoice listing charges for each student separately. Contractor shall submit invoices within .... days after the start of the term it covers and shall include:

(i) agreement number and inclusive dates of the term to which the invoice applies;
(ii) name of each student;
(iii) schools which charge by credit hour shall list each course for each student;
(iv) the resident or nonresident status of each student (if applicable to the Contractor's school);
(v) breakdown of charges for each student, identifying each element; *e.g.*, Credit Hours: $.............., Tuition: $.............., Application Fee: $..............., Lab Fee (Chem 300): $..............., Contractor shall show the *total of fees for each student and grand total for all students listed on the invoice*.

(g) If unforseen events require additional charges which are otherwise payable in accordance with the Contractor's published tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. In either case the Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(h) The Contractor shall apply to subsequent invoices submitted under this agreement any credits resulting from withdrawal of students, or from any other cause in accordance with its standard procedures. Such credits should appear on the first invoice submitted after the action resulting in such credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of Students*. *(1971 APR)*

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government shall furnish .... copies of such orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

5. *Transcripts*. Within a reasonable period of time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to such other address as the Contracting Officer may specify) one copy of an official transcript showing all work by the student at the Contractor's institution until such withdrawal or graduation. (1968 SEP)

6. *Student Teaching*. *(1968 SEP)*

Awarding of fellowships and assistantships by the Contractor to students attending school under this agreement is not anticipated. In the case of graduate students, however, should both the student and the Contractor deem it to be in the best interests of the student for him to assist in the teaching program of the institution, the Contractor may provide nominal compensation for such students' part-time service in accordance with the Contractor's established practices and procedures for other students of similar accomplishment in that department or field. Such compensation shall be applied as a credit against any invoices presented for payment for any period in which he performed the part-time teaching service.

7. *Termination of Agreement*. (1968 SEP)

(a) Either party may terminate this agreement by giving thirty (30) days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the Contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students pursuant to Schedule Provision 4 shall not be considered a termination within the meaning of this provision.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

16-501.3 *General Provisions.*

GENERAL PROVISIONS

1. *Definitions.* Insert clause from 7-103.1, with the following additional paragraphs.

(d) The word "term" means the period of time into which the Contractor divides the academic year for purposes of instruction; this includes "semester," "trimester," "quarter," or any similar word the Contractor may use. (1968 SEP)

(e) The word "course" means a series of lectures or instructions, and/or laboratory periods, relating to one specific presentation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion. (1968 SEP)

(f) The word "curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion. (1968 SEP)

(g) The word "catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use. (1968 SEP)

(h) The word "tuition" means the amount of money charged by an educational institution for instruction, not including fees as defined below. (1968 SEP)

(i) The word "fees" means those applicable charges directly related to enrollment in the Contractor's institution. This shall not include any permit charge (*e.g.*, parking, vehicle registration or charges for services of a personal nature (*e.g.*, food, housing, laundry) unless specifically called for in the request placed hereunder. (1968 SEP)

2. *Gratuities.* Insert clause from 7-104.16.
3. *Covenant Against Contingent Fees.* Insert clause from 7-103.20.
4. *Officials Not To Benefit.* Insert clause from 7-103.19.
5. *Approval of Contract.* Insert clause from 7-105.2 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.
6. *Order of Precedence.* Insert clause from 7-2003.41.
7. *Conflicts Between Agreement and Catalog.* Insert the following clause.

CONFLICTS BETWEEN AGREEMENT AND CATALOG (1968 SEP)

To the extent of any inconsistency between the provisions of this agreement and any catalog or other document incorporated in this agreement by reference or otherwise or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. *Disputes.* Insert clause from 7-103.12.
9. *Convict Labor.* Insert clause from 7-104.17.
10. *Equal Opportunity.* In accordance with 12-804 and 12-805, insert the appropriate clause from 7-103.18.
11. *Assignment of Claims.* Insert the following clause.

ASSIGNMENT OF CLAIMS (1968 SEP)

No claim under this agreement shall be assigned.

12. *Examination of Records.* In accordance with the requirements of 7-104.15, insert the clause therein.
13. *Alterations in Contract.* Insert clause from 7-105.1(a) in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

16-501.4 *Signature Page*. The signature page shall be in the following format.

Agreement No. ....

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereunto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA
BY:......................................
(Contracting Officer)

Activity ....
Location ....

(NAME OF CONTRACTOR)
BY:......................................
(Title)..............................

16-502 Format for Contract for Dismantling, Demolition or Removal of Improvements. In accordance with 4-501, the format below, together with the applicable clauses in 7-2101 and 7-2102, shall be used for contracts for dismantling, demolition or removal of improvements:

Contract No. ....

CONTRACT FOR DISMANTLING,
DEMOLITION OR REMOVAL OF IMPROVEMENTS
DEPARTMENT OF ....

CONTRACTOR AND ADDRESS:

CONTRACT FOR:

LOCATION:

*PAYMENT will be made to:	*PAYMENT will be made by:
....	....
....	....
....	....
	Appropriation Data
	....
	....

**Delete inapplicable phrase*.

THIS CONTRACT is entered into this .... day of .... , 19........ ,
by the United States of America (hereinafter called the Government), and
* a Joint Venture consisting of ....
* .... , a corporation organized and
existing under the laws of the State of ....
* a partnership consisting of ....
* an individual trading as ....
of the city of .... in the State of ....
(hereinafter called the Contractor).
The parties hereto do mutually agree to perform this contract
in strict accordance with ....(number of pages).......... General Provisions,
and the following designated specifications, drawings and conditions:

(The next page is: 16:36)

Alterations. The following alterations were made in this contract before it was signed by the parties hereto:

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA
By ....(*Contracting Officer*)

.... (Contractor)
By ....
(*Title*) ....

**Delete all lines which do not apply.*

16–503 Master Contract for Repair and Alteration of Vessels (DD-ASPR Form 731 and DD Form 731–1).

16–503.1 *General.* DD-ASPR Form 731 is prescribed to establish in advance the terms upon which a contractor will effect repairs, alterations and additions to vessels under the provisions of job orders issued by contracting activities from time to time. The Master Contract (DD-ASPR Form 731) shall be entered into with all prospective contractors located within the United States who request ship repair work and who possess the organization and facilities to perform such work satisfactorily. Award of the Master Contract, however, does not constitute approval of the contractor's facilities for any particular job. When using master contracts in work with prospective contractors located outside the United States, DD-ASPR Form 731 shall be used as a guide.

16–503.2 *Inviting Bids or Quotations for Job Orders.* When a requirement arises for the type of work covered by the master contract within the United States, bids or quotations will be solicited from prospective contractors who have previously executed a master contract, and also from prospective contractors, who possess the necessary qualifications and agree to execute a master contract before issuance of a job order. Whenever a prospective contractor is invited to submit a bid or quotation, the contracting officer shall notify the prospective contractor in reasonable detail of (i) the nature of the work to be performed, (ii) the date the vessel will be available, and (iii) the date the work is to be completed. In the event the prospective contractor is willing and able to perform the work he shall be afforded an opportunity to inspect the work to be accomplished, and then he shall submit a bid or quotation for the performance of the work in accordance with the invitation for bids or request for quotations. If the contracting officer requests prospective contractors to negotiate, he shall also request a breakdown of the price quoted indicating the estimated cost of (i) direct labor, (ii) material, (iii) overhead, (iv) any amount included for contingencies and profit, and (v) such other information as the contracting officer may consider necessary.

16–503.3 *Issuance of Job Order* (*DD Form 731–1*). In addition to the procedures set forth in 1–905 for making the determination called for by 1–904, the contracting officer may make a pre-award survey of the contractor's operations to insure the adequacy and suitability of facilities, including safety standards and devices, adequacy of facilities for the health, comfort and welfare of the crew of the vessel, and adequate plant protection to safeguard the vessel and other Government property. After the receipt and evaluation of bids or quotations and selection of the contractor, the price for the work and other pertinent data shall be set forth in a Job Order (DD Form 731-1). This job order, by its terms, is subject to the provisions of the master contract. When the procurement has been formally advertised, issuance of a job order, signed by the contracting officer only, constitutes an award. When the procurement of the services has been negotiated the job order must also be signed by the contractor, and returned to the contracting officer.

16-503.4 *Emergency Work Required Prior to Issuance of a Job Order.* In the following circumstances, the contracting officer, without inviting bids or requesting quotations, may issue a written order for work to a contractor who has executed a Master Ship Repair contract; (i) when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (ii) when military necessity requires immediate work on a vessel. Contractors who sign the master contract agree to perform the work required by such written orders within their capabilities. As soon as practicable after the issuance of such written orders, the parties are required by the master contract to negotiate a price for the work. When agreement is reached upon a price, the contracting officer will issue a job order covering the work. The master contract provides for a procedure to resolve disputed questions with respect to price. However, the contractor is required to proceed diligently with the work pending a decision upon such disputes.

16-503.5 *Repair Costs Not Readily Ascertainable.* If the nature of any repairs is such that their extent and probable cost are not readily ascertainable, the contracting officer may issue a job order, on a negotiated or formally advertised basis, to determine the nature and extent of required repairs. The job order shall also provide that upon such determination, the contractor, if requested by the contracting officer, shall negotiate prices for the performance of such work as the contracting officer may deem necessary to accomplish the repairs. The prices so agreed upon shall be set forth in an amendment to the job order.

16-503.6 *Modification of Master Contracts.*

(a) Since master contracts prescribe the terms and conditions under which contractors submit bids and competitive quotations for vessel repair work, it is essential that the provisions of all outstanding master contracts be kept uniform. It is also necessary that master contracts be kept up to date and reflect changes in statutes, executive orders, and procurement regulations applicable to vessel repair work. The DD ASPR Form 731 will be revised periodically, not more frequently than annually, to incorporate all changes made necessary by ASPR revisions unless revision is required by statute or Executive Order. All outstanding master contracts shall be replaced using the latest revised form, effective as to all job orders issued on or after 60 days after the promulgation of such revision. Pending revision of DD ASPR Form 731, the clause in 7-602.27 shall be inserted in master contracts in accordance with 11-302(c).

(b) To minimize interim amendments to master contracts, ASPR revisions changing clauses in the master contract form will provide appropriate direction with respect to any required amendments to master contracts. To the extent possible, amendments will be required only in matters resulting from changes in statutes or Executive Orders.

16-504 Forms for Paid Advertisements (DD Forms 1155, 1155r and 1535 and Standard Form 26).

(a) DD Form 1535 (Request/Approval for Authority to Advertise) shall be used in requesting authority to place paid advertisements in newspapers, and may be used in requesting authority to place advertisements in magazines, trade journals, and any other media, including radio and television (see 4-802).

(b) The following forms shall be used to order and effect payment for advertisements in newspapers and other media (see 4-803):

(i) DD Forms 1155 and 1155r (Order for Supplies or Services/Request for Quotations); and

(ii) Standard Form 26 (Award/Contract).

16-505 Communication Service Authorization (DD Form 428).

(a) In accordance with 22-1008.3, DD Form 428 shall be used as an order for communication services, including associated equipment and facilities. It may be used also as a delivery order under GSA Federal Supply Schedule contracts.

(b) When the volume of transactions necessitates preparation of orders by other than manual processes, a format suitable for an electronic data processing system may be used in lieu of DD Form 428, *provided*, that all essential elements of DD Form 428 are incorporated in the electronic data processed CSA.

PROCUREMENT FORMS

Part 6—Forms for Coordinated Procurement

16-600 Scope of Part. This Part prescribes forms to be used by a requiring Department to request that supplies or nonpersonal services be procured by another Department or agency in accordance with the provisions of Section V, Part 11.

16-601 Military Interdepartmental Purchase Request (MIPR) (DD Form 448) and Standard Form 36. DD Form 448 shall be used by the requiring Departments to:

(i) request the procurement of supplies or nonpersonal services by the procuring department or agency, and

(ii) permit the procuring department or agency to authorize manufacture of the necessary supplies.

DD Form 448 is authorized for use in effecting other types of coordinated procurement pursuant to Section V, Part 11. When a continuation sheet is necessary, Standard Form 36 shall be used.

16-602 Acceptance of MIPR (DD Form 448-2). DD Form 448-2 shall be used by the procuring department to notify the requiring department of the action taken or to be taken upon a MIPR.

16-603 Requisition for Coal, Coke, or Briquettes (DD Form 416). DD Form 416 shall be used in lieu of DD Form 448 by the requiring departments to request the procurement of coal, coke, or fuel briquettes by the procuring department.

16-604 Requisition and Invoice/Shipping Document (DD Form 1149). DD Form 1149 is prescribed for use in accordance with 5-1108.1 and 24-301.5.

PROCUREMENT FORMS

Part 7—Contract Termination Forms

16-700 Scope of Part. This Part prescribes forms for use in connection with terminated contracts (see Section VIII).

16-701 Notices of Termination. Use of Standard Form 30 (Amendment of Solicitation/Modification of Contract) is prescribed in 16-103(b)(iii) for notices of termination. Appropriate texts of telegraphic and confirming notices of termination which may be used are set forth in 8-801.1 and 8-801.2. Regardless of the format used in issuing termination notices, a supplementary PII number shall be employed to identify the action in accordance with 20-204.

16-702 Settlement Proposal Forms. Although the forms prescribed below are designed for use by prime contractors, they are equally suitable for use by subcontractors.

16-702.1 *Settlement Proposal—Inventory Basis (DD Form 540).* DD Form 540 is prescribed for use by contractors in presenting claims resulting from the termination of fixed-price contracts when such claims are computed on the inventory basis.

16-702.2 *Settlement Proposal—Total Cost Basis (DD Form 541).* DD Form 541 is prescribed for use by contractors in presenting claims resulting from the termination of either fixed-price or cost-reimbursement type contracts when such claims are computed on the total cost basis.

16-702.3 *Settlement Proposal for Cost-Reimbursement Type Contracts (DD Form 547).* DD Form 547 is prescribed for use by contractors in submitting claims resulting from the termination of cost-reimbursement type contracts.

16-702.4 *Settlement Proposal (Short Form) (DD Form 831).* DD Form 831 is authorized for use by contractors in submitting claims resulting from the termination of fixed price contracts when the total claim is less than $10,000.

16-702.5 *Inventory Schedules (DD Forms 542, 543, 544, 545, and 832).* The DD Form 832 (Termination Inventory Schedule E—Short Form) is prescribed for use by contractors to support settlement proposals submitted on DD Form 831. For other inventory schedule forms to support settlement proposals submitted on DD Forms 540, 541, and 547, see 16-818.

16-702.6 *Schedule of Accounting Information (DD Form 546).* DD Form 546 is prescribed for use by contractors in connection with settlement proposals (see 8-307.1).

16-703 Application for Partial Payment (DD Form 548). DD Form 548 is prescribed for use by contractors when applying for partial payments (see 8-213.1(a)).

16-704 Reserved.

16-705 Forms of Settlement Agreement. Use of Standard Form 30 (Amendment of Solicitation/Modification of Contract) is prescribed in 8-210 for termination settlement agreements. Appropriate texts are set forth in 8-805.

16-706 Instructions for Use of Termination Forms. DD Form 1114 consists of instructions for the use of contract termination settlement and inventory schedule forms.

PROCUREMENT FORMS

Part 8—Miscellaneous Forms

16-800 Scope of Part. This Part prescribes miscellaneous forms, other than contract forms, for use in connection with the procurement of supplies and services.

16-801 Reserved.

16-802 Contractor's Statement of Contingent or Other Fees (Standard Form 119). Standard Form 119 is prescribed for use in accordance with 1-507 through 1-510.

16-803 Compliance With Labor Laws, Regulations, and Clauses.

16-803.1 *Construction Contracts.*

(a) Standard Form 308 (Request for Determination and Response to Request) shall be used, in accordance with the provisions of 18-704.2, for the submission of requests for the determination of wage rates by the Secretary of Labor.

(b) Standard Form 1093 (Schedule of Withholdings under the Davis-Bacon Act), shall be used, in accordance with the provisions of 18-704.13, to report deductions against payment vouchers of contractors on account of failure to comply with labor laws, regulations, and clauses. To facilitate the work of contracting agencies in computing underpayments (and where applicable, Eight-Hour Laws penalties) in investigation reports involving apparent violations of the Davis-Bacon and related Acts, the Department of Labor has developed and will furnish, on request, Form SOL-164 "Wage Computation and Transcription Sheet." Use of this form is optional; its use will also facilitate review of investigation reports.

(c) (1) The weekly payroll statement required by the contract clauses prescribed by 18-703.1 or 18-703.3 shall be in one of the following forms:

- (i) "Payroll (For Contractor's Optional Use)," Form WH-347 (1 / 68) U. S. Department of Labor.
- (ii) "Statement of Compliance," DD Form 879.
- (iii) The contractor's own combined payroll-statement form, *provided* the statement is produced in exactly the language of Form WH-347 or DD Form 879 and the signer certifies on the statement: "The language of this statement is exactly the language of.............................".

(2) A supply of DD Forms 879 may be furnished to the contractors for their use. Forms WH-347 may be purchased from the Government Printing Office.

(d) Department of Labor Form WH 1321, Notice to Employees Working on Federal or Federally Financed Construction Projects, shall be furnished to the contractor in accordance with 18-704.2(j).

16-803.2 *Supply Contracts.* Department of Labor WH Publication 1313, Notice to Employees Working on Government Contracts, shall be furnished to the contractor in accordance with the provisions of 12-604.

16-803.3 *Service Contracts.*

(a) *Notice of Intention To Make a Service Contract and Response to Notice (Standard Form 98).* Standard Form 98 is prescribed for use in accordance with 12-1005.2(a).

(b) *Notice of Award of Contract* (*Standard Form 99*). Standard Form 99 is prescribed for use in accordance with 12–1005.5(a).

16–804 United States Government Tax Exemption Certificate (Standard Form 1094). Standard Form 1094 will be used in accordance with Section XI, Part 5.

16–805 Bond Forms. The bond forms listed below are available for use in accordance with Departmental procedures. (See Section X, Parts 1 and 2.)

(i) Bid Bond (Standard Form 24).
(ii) Annual Bid Bond (Standard Form 34).
(iii) Performance Bond (Standard Form 25).
(iv) Payment Bond (Standard Form 25–A).
(v) Continuation Sheet for Standard Forms 24, 25 and 25–A (Standard Form 25–B).
(vi) Affidavit of Individual Surety (Standard Form 28).
(vii) Annual Performance Bond (Standard Form 35).
(viii) Performance Bond Form for Subcontracts (see 10–103.3(a)).

PERFORMANCE BOND ....
DATE BOND EXECUTED ....
PRINCIPAL ....
SURETY ....
OBLIGEE ....
PENAL SUM OF BOND (*express in words and figures*)
CONTRACT IDENTIFICATION AND DATE ....

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the Obligee above named in the amount of the penal sum stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executers, administrators, successors, and assigns, jointly and severally, firmly be these presents.

WHEREAS, the Obligee and Principal have entered into a certain contract identified above, which contract is by reference made a part hereof and is hereinafter referred to as the contract.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract, then this obligation shall be null and void; otherwise to remain in full force and virtue.

1. The Contract includes all duly authorized modifications and extensions thereof, with or without notice to the Surety and extends to any guaranty required by the terms thereof.

2. The rights of the Obligee hereunder may be assigned to the United States of America or a Department or Agency thereof, and without in any manner invalidating or qualifying this instrument. Notice of assignment shall be given the surety within a reasonable time, but a failure of notice shall not affect the validity of this bond or the assignment.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents being duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of:

WITNESS		INDIVIDUAL PRINCIPAL	
1.	as to	....	[SEAL]
2.	as to	....	[SEAL]
3.	as to	....	[SEAL]
4.	as to	....	[SEAL]

WITNESS		INDIVIDUAL SURETY	
1.	as to	....	[SEAL]
2.	as to	....	[SEAL]

Attest:	CORPORATE PRINCIPAL	
	BUSINESS ADDRESS	
	BY	AFFIX CORPORATE SEAL
	TITLE	
Attest:	CORPORATE SURETY	
	BUSINESS ADDRESS	
	BY	AFFIX CORPORATE SEAL
	TITLE	

(ix) Payment Bond Form for Subcontracts (see 10–108.3(a)).

PAYMENT BOND	**DATE BOND EXECUTED**
PRINCIPAL	
SURETY	
OBLIGEE	
PENAL SUM OF BOND (*express in words and figures*)	**CONTRACT IDENTIFICATION AND DATE**

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the Obligee above named, in the amount of the penal sum stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee and the Principal entered into a certain contract identified above, which contract is by reference made a part hereof and is hereinafter referred to as the Contract; and

WHEREAS, performance of the Contract is related to work required under Government Prime Contract..............the site of such work being in the County of..............., State of..............., being hereinafter referred to as the "place where the work is located."

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material furnished in the prosecution of the work provided for in the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect. A claimant shall have a direct right of action hereunder against the Principal and the Surety subject to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal who has furnished labor, material or both, in the prosecution of work provided for in the contract and who has not been paid in full therefor. Labor and material are construed to include, but are not limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed or materials were furnished by such claimant, or before the expiration of the period provided by the law of the place where the work is located for the giving of first notice of a lien of the category claimed by the claimant, whichever period be longer, may prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and may have execution thereon; provided, however, that neither the Obligee nor the assignee of the Obligee shall be liable for the payment of any costs or expenses of any such suit, judgment or execution.

3. The Obligee may assign this instrument and any right it has hereunder to the United States of America or any department or agency thereof without in any way diminishing the obligations of the Principal and Surety hereunder.

4. No suit or action shall be commenced hereunder by any claimant,

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal and the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or from whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in envelopes addressed to the Principal and the Surety, at any place where an office is regularly maintained by the addressee for the transaction of business, or served in any manner in which legal process may be served in the place where the work is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract. If any period of limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a court of competent jurisdiction in and for the state or other political subdivision of the place where the work is located, or in the United States District Court for the district where the work is located, and not elsewhere.

5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents being duly signed by its undersigned representative pursuant to authority of its governing body.

In Presence of:

WITNESS — INDIVIDUAL SURETY

1. ______________________ as to ______________________ [SEAL]

2. ______________________ as to ______________________ [SEAL]

3. ______________________ as to ______________________ [SEAL]

4. ______________________ as to ______________________ [SEAL]

WITNESS — INDIVIDUAL PRINCIPAL

1. ______________________ as to ______________________ [SEAL]

2. ______________________ as to ______________________ [SEAL]

Attest:	CORPORATE PRINCIPAL	
	BUSINESS ADDRESS	
	BY	AFFIX CORPORATE SEAL
	TITLE	
Attest:	CORPORATE SURETY	
	BUSINESS ADDRESS	
	BY	AFFIX CORPORATE SEAL
	TITLE	

16-805

ARMED SERVICES PROCUREMENT REGULATION

16-806 Royalty Report (Foreign and Domestic) (DD Form 783). DD Form 783 is approved for use by contractors and prospective contractors in making reports of royalty information as required by 9-110. While it is preferred that contractors use DD Form 783 (and contractor reproduction of the form is authorized), the contractor may submit the royalty information in such other form as is considered desirable by the contractor, *provided* such other form contains all of the information required by 9-110.

16-807 Report Documentation Page (DD Form 1473). This form shall be used in connection with scientific and technical reports under research and development contracts pursuant to 4-113.

16-808 Reserved.

16-809 Report of Inventions and Subcontracts (DD Form 882). DD Form 882 is approved for optional use by contractors in reporting information required by paragraph (c) of the Patent Rights clauses set forth in 7-302.23(a) and (b).

16-810 Bidders Mailing List Application (Standard Form 129) and Bidders Mailing List Application Supplement (DD Form 558-1).

16-810.1 *General.* Standard Form 129 shall be used in connection with the establishment and maintenance of bidders lists as prescribed in 2-205 and for research and development in ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists." Supplemental Information, where required, may be obtained by using DD Form 558-1 (Bidders Mailing List Application Supplement).

16-810.2 *Conditions for Use.*

(a) The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive Invitations for Bids and Requests for Proposals.

(b) Pending the publication of a new edition of the form, the representation prescribed by 7-2003.74 shall be added as a fourth entry after the entry entitled "*Commerce Business Daily*" on Page 2.

16-810.3 *Item Listings for Information of Bidders.* In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids or proposals, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, procured by the purchasing activity maintaining the list, which are considered applicable to the supplier's type of business.

16-811 Contract Security Classification Specification (DD Form 254) .

Contracting officers shall inform contractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract by using Contract Security Classification Specification, DD Form 254. Instructions for preparation of this form are contained in Section VII, DoD 5220.22-R. The contracting officer is the approving official for the Contract Security Classification Specification and shall insure that it is distributed in accordance with Section VII, DoD 5220.22-R.

16-812 Release and Assignment Forms.

(a) The forms set forth below are approved for use in complying with the assignment and release provisions of paragraph (f) of the compensation clauses for cost-plus-fixed-fee and cost-plus-incentive-fee contracts set forth in 7-203.4 (a) and (b). Forms differing from the approved forms may be used if the contracting officer determines that such forms meet the applicable requirements of the clause. Checks received by Department contracting officers pursuant to paragraph 2 of the assignments in (d) and (e) below shall be forwarded to the finance officer designated in the contract.

(b) Set forth herein is an approved form for the contractor's release required by paragraph (L) of the clauses in 7-203.4 (a) and (b).

CONTRACTOR'S RELEASE (JUL. 1956)

Contract No. ....

Pursuant to the terms of Contract No.................................... and in consideration of the sum of................................ Dollars ($.........................) which has been or is to be paid under the said contract to ....(*Contractor's name and address*).
(hereinafter called the Contractor) or its assignees, if any, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract.

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all of the provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESS WHEREOF, this release has been executed this .... day of .... 19..........

....................(*Contractor*)

WITNESSES ....
BY....................................
TITLE....................................

NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed.

CERTIFICATE

I, ..., certify that I am the ....(*official title*) of the corporation named as Contractor in the foregoing release; that .... who signed said release on behalf of the Contractor was the ....(*official title*) of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Signature ....

(CORPORATE SEAL)

The following sentence shall be added to the final paragraph of the above release form when the related contract provides for reimbursement on a cost-plus-incentive-fee basis:

The Contractor further agrees that payments on account of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract "Allowable Cost, Incentive Fee, and Payment".

(c) Set forth below is an approved form for the assignee's release required by paragraph (L) of the clauses in 7–203.4 (a) and (b).

ASSIGNEE'S RELEASE (MAY 1958)

Contract No..

Pursuant to the terms of Contract No .... and in consideration of the sum of .... Dollars ($....................) which has been or is to be paid under the said contract by the UNITED STATES OF AMERICA (hereinafter called the Government) to the Contractor or his assignees, the .... (*Assignee's name and address*).

(i) a corporation organized and existing under the laws of the State of ....,

(ii) a partnership consisting of ....,

(iii) an individual trading as ...., (hereinafter called the Assignee), upon receipt of that part of the said sum due under his assignment does remise, release and discharge the Government, his officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract and assignment, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:
2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor or Assignee on the date of the execution of this release and of which the Contractor or Assignee gives notice in writing to the Contracting Officer within the period specified in the said contract.
3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

The Assignee agrees, in connection with claims which are not released as set forth above, that final payment under the said contract does not modify the requirements and limitations imposed on the Contractor or Assignee by the contract or the assignment, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESS WHEREOF, this release has been executed this ....day of ....19..........

(*Assignee*)..................

WITNESS ....

BY...............................

TITLE ....

(*NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed.*)

CERTIFICATE

I,.......................................,

certify that I am the .... (*official title*)

of the corporation named as Assignee in the foregoing release; that

...................................who signed said release on behalf of the Assignee was then

.... (*official title*) *of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.*

.... (*signature*)

(CORPORATE SEAL)

The following sentence shall be added to the final paragraph of the above release form when the related contract provides for reimbursement on a cost-plus-incentive-fee basis:

> The Assignee further agrees that payments on account of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee and Payment."

(d) Set forth below is an approved form for the contractor's assignment of refunds, rebates, credits, and other amounts, required by paragraph (L) of the clauses in 7-203.4 (a) and (b).

CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS (1976 OCT)

Contract No. ....

Pursuant to the terms of Contract No .... and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, the ....(*Contractor's name and address*)

(hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over and release to the UNITED STATES OF AMERICA (hereinafter called the Government) all right, title and interest to all refunds, rebates, credits, and other amounts (including any interest thereon), arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits, and other amounts (including any interest thereon) due or which may become due, and to promptly forward to the Contracting Officer checks (made payable to the office designated for contract administration) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits, or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney, or other papers in connection therewith; and to permit the Government to represent him at any hearing, trial, or other proceeding, arising out of such claim or suit.

IN WITNESS WHEREOF, this assignment has been executed this .... day of ...., 19.. ......

(*Contractor*)............................

WITNESSES ....

BY....................................

TITLE...................................

NOTE: In the case of a corporation, witnesses are not required, but the following certificate must be completed.

CERTIFICATE

I, ..., certify that I am the ....(*Official Title*) of the corporation named as Contractor in the foregoing assignment; .... who signed said assignment on behalf of the Contractor was then ....(*Official Title*) of said corporation; that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

...................(*Signature*)

(CORPORATE SEAL)

In the foregoing form, substitute in contracts of the Marine Corps the words "Disbursing Officer, Special Accounts Section (Code CSG), Hqs. Marine Corps, Washington, D.C. 20380" for the words "Contracting Officer" in line 3 of paragraph 2.

(e) Set forth below is an approved form for the assignee's assignment of refunds, rebates, credits, and other amounts required by paragraph (L) of the clauses in 7-203.4 (a) and (b).

ASSIGNEE'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS (MAY 1958)

Contract No....................

Pursuant to the terms of Contract No. .... and in consideration of the reimbursement of costs and payment of fees, as provided in the said contract and assignment thereunder, the ....(*Assignee's name and address*)

(i) a corporation organized and existing under the laws of the State of ....

(ii) a partnership consisting of ....

(iii) an individual trading as ....

(*hereinafter called the Assignee*), does hereby assign, transfer, set over, and release to the UNITED STATES OF AMERICA, all right, title, and interest to all refunds, rebates, credits, and other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

IN WITNESS WHEREOF, this assignment has been executed this .... day of .... 19..........

....................(*Assignee*)

WITNESSES

....

....

BY....................................

TITLE ....

NOTE: In the case of a corporation, witnesses are not required, but the following certificate must be completed.

CERTIFICATE

I, ..., certify that I am the .... of the corporation named as Assignee in the foregoing assignment; .... who signed said assignment on behalf of the Assignee was then .... of said corporation; that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(*Signature*) ....

(CORPORATE SEAL)

16–813 Small Purchase Pricing Memorandum. Small Purchase Pricing Memorandum, DD Form 1784, shall be used to document purchase order files as to reasonableness of price when a separate form is used for that purpose (see 3–604.2). Local reproduction of DD Form 1784 is authorized.

16–814 Records of Contract Actions. Contract Cross Reference Data (DD Form 1592) shall be used in connection with the maintenance of contract cross reference/locator systems as prescribed in Supplement 2, Part 2. Contract Administration Completion Record (DD Form 1593), Contract Completion Statement (DD Form 1594), and Contract Closeout Check List (DD Form 1597) shall be used to assure completion of all required actions prior to closeout of contract files in accordance with Supplement 2, Part 3.

16–815 Contract Data Requirements List (DD Form 1423).

(a) Except as provided in (b) below, DD Form 1423 provides in one place in the contract a list of data items required to be delivered under the contract and, in the case of negotiated contracts over $100,000, provides the means for obtaining from the contractor (and offerors) an estimate of what portion of the total price is attributable to the production or development of the listed data (not to the sale of rights in the data). Use of DD Form 1423 also helps achieve the following objectives of the Department of Defense with respect to the acquisition of data:

(i) To acquire most economically the minimum amount of data needed to procure and support military systems, materiel and services.

(ii) To assure the acquisition of required data on time to serve its intended purpose.

(iii) To establish data requirements on the basis of needs in management, engineering and logistics functions of the DoD; and to fulfill these needs on the basis of cost-effectiveness analyses.

(iv) To specify data requirements in solicitations for proposals in sufficient detail to provide a basis for a full, clear, and firm understanding between the Government and the contractor with respect to the total data requirements at the time the contract is placed. This requirement may be satisfied by a contractual provision for the right to defer the selection, ordering, or delivery of technical data specified in the contract.

(v) To provide competent administration of contracts requiring the furnishing of data, and assure that all contract provisions pertaining to data are fully satisfied.

(vi) To maintain quality assurance procedures in the acquisition of data to assure the adequacy of the data for its intended purpose.

(vii) To provide for the continued currency of acquired data in consonance with requirements.

(viii) To prevent the acquisition of duplicate or overlapping data pertaining to materiel, systems or services when data which would serve the same end has been or is being acquired by the Government from the same or other contractor.

(b) Except as set forth in 7–104.9(n), DD Form 1423 or its mechanized equivalent shall be used when data is required to be delivered under a contract, and shall constitute the sole contractual list of requirements for the amounts and kinds of data required. When DD Form 1423 is used, it will be completed and furnished to the contracting officer by the personnel responsible for determining the data requirements of the contract. The reverse side of the form contains instructions for offerors to follow in entering on the form the price group and estimated price for each data item. The identification of a data item in a standard, specification or similar document does not establish data requirements under a contract; nor does the identification of a data item included in an alteration to a Section VII clause constituting an approved deviation pursuant to 1–109 (and 9–202.3 when applicable). Government personnel are therefore cautioned that, except for the situations listed in 7–104.9 (n) and data called for by ASPR Section VII clauses included in the contract, the delivery of any data item can be assured only by listing it on the DD Form 1423. The clause set forth in 7–104.9(n) shall be used when the DD Form 1423 is used.

(c) In completing the DD Form 1423, the purchasing offices shall insure that block 7 thereon is checked whenever a DD Form 250 is required for shipment of exhibit line or exhibit subline items. A DD Form 250 shall always be required for exhibit or exhibit subline items, which are separately priced (NSP excluded) or where source inspection or acceptance is required.

(d) When both ASPR clause 7–104.62, "Material Inspection and Receiving Report" and a DD Form 1423 are to be included in a contract, special procedures are required for completing the form to avoid incurring unnecessary DD Form 250 preparation and processing costs. In order to mitigate the DD Form 250 costs associated with data, the individuals responsible for completing the DD Form 1423 shall consider, and use where feasible, the various techniques available in reducing DD Form 250 generation. Among the techniques available, where Inspection/Acceptance is at destination and multiple consignees are involved, is the one of splitting data requirements among two or more CLIN/ ELIN/ SUBLINE items. As an example, if there is a data requirement calling for a monthly report to be accepted at destination with copies to be provided multiple consignees, the requirement may be divided between two CLINs within the contract schedule or ELINs on the DD Form 1423. One of the CLINs/ ELINs would be established for the consignee where destination inspection/acceptance is necessary. The second of the CLINs/ ELINs would be established for the remaining consignees for this report. The second CLIN/ ELIN/ SUBLINE would require the preparation of only one DD Form 250 if inspection and acceptance for this CLIN/ ELIN were at origin in accordance with I–304. This second CLIN/ ELIN/ SUBLINE shall contain, in Block 16 of the DD Form 1423, specific guidance or limitations regarding conditions pertaining to the nature of the inspection/acceptance function. Unless otherwise specified, the inspection/acceptance function at origin shall be limited to examination of: (i) type and kind, (2) quantity; and (3) condition. If the second CLIN/ ELIN/ SUBLINE does not require inspection and acceptance and it is not separately priced, a letter of transmittal may be used as an alternate to a DD Form 250.

16–816 Identical Bid Report for Procurement (Form DJ–1500). This form shall be used in reporting identical bids, pursuant to 1–114.

16–817 Abstract Forms. DD Forms 1501, 1501c, and 1501–1, Abstract of Bids, shall be used to record the bid or proposal evaluation information as required in 1–308, 2–403, and 3–109. In preparing these forms, the extra columns and the continuation sheet may be used to label and record such information as the procuring activity deems necessary.

16–818 Inventory Schedules (DD Forms 542, 543, 544, and 545). The following forms are prescribed for use by contractors to report contractor inventory for disposition and to support settlement proposals submitted on DD Form 540, 541, or 547:

(i) DD Form 542 (Inventory Schedule A—Metals in Mill Product Form) and DD Form 542c (Continuation Sheet);
(ii) DD Form 543 (Inventory Schedule B—Raw Materials) and DD Form 543c (Continuation Sheet);
(iii) DD Form 544 (Inventory Schedule C—Work in Process) and DD Form 544c (Continuation Sheet); and
(iv) DD Form 545 (Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools) and DD Form 545c (Continuation Sheet).

16–819 Material Inspection and Receiving Report (MIRR) (DD Form 250 Series). DD Forms 250, 250c and 250–1 shall be used as required by 7–104.62 and Appendix I.

16–820 Transportation Data for IFB's and RFP's (DD Form 1653). This form, which will contain recommendations to the PCO concerning f.o.b. terms best suited for the procurement, and other suggested transportation provisions including mail and freight shipping information relative to proper points of consignment of supplies for inclusion in the IFB/RFP, shall be completed upon request of the PCO by the transportation specialist, for association with the appropriate purchase request. Mail and freight shipping information generally will be obtained from the Terminal Facilities Guides published by Military Traffic Management and Terminal Service (MTMTS). When appropriate, DD Form 1653 will also include information on combined port handling and transportation charges to be included in the IFB/RFP in connection with export shipments.

16–821 Reserved.

16–822 Evaluation of Transportation Cost Factors (DD Form 1654). This form permits procurement personnel to furnish basic information to the transportation office for development of transportation cost factors which shall be used by the procuring contracting officer in the evaluation of f.o.b. origin bids or proposals.

16–823 Application for US Government Bill(s) of Lading / Domestic Route Order / Export Traffic Release (DD Form 1659). DD Form 1659 (four page carbon interleaf) shall be prepared by the contractor for submission of advance shipping data to the cognizant contract administration office. In response, the transportation office of the contract administration office shall furnish the required U.S. Government Bill of Lading, Domestic Route Order, or Export Traffic Release, when necessary, required for use in connection with the Government contract.

16–824 Report of Government (DoD) Facilities (DD Form 1662). DD Form 1662 is prescribed for use by contractors to report annually the total acquisition cost of Government (DoD) Facilities and the quantity of IPE in their possession or control including facilities at alternate locations of the prime contractor or at subcontractor plants for which the prime contractor is accountable (see B–311 and C–311). Local reproduction of DD Form 1662 is authorized.

16–825 Reserved.

16–826 Delay in Delivery (Flash Notice) (DD Form 375–2). This form shall be used as directed in 25–203.

16–827 Management Systems Summary List (DD Form 1660).

16–827.1 A DD Form 1660 and the clause set forth in 7–104.50 shall be included in all solicitations and contracts which are estimated to exceed $1,000,000 and use management systems other than those required by ASPR (see 1–331). The DD Form 1660 shall list each management system required by the contract except those required by a clause set forth in this Regulation.

16–827.2 The DD Form 1660 shall be prepared and used in accordance with the following:

(a) Each entry shall be selected from the Acquisition Management Systems and Data Requirements Control List (AMSDL), DoD Directive 5000.19–L, Volume II.

(b) Entries on the DD Form 1660 shall be made as follows:

Item 1. Number the entries sequentially.

Item 2. Transcribe the document numbers from the AMSDL (DODD 5000.19–L, Volume II).

Item 3. Transcribe the document date from the AMSDL.

Item 4. Transcribe the document title from the AMSDL.

Item 5. Enter the date of the AMSDL edition which lists the documents. This should be the date of the most current edition, except in the case of on-going programs when a previously applied management system subsequently deleted, is being continued.

Item 6. Enter the AMSC (Acquisition Management System Control) number, or cite authority to use management system not authorized.

Item 7. Leave Blank.

Item 8. Enter the DD Form 1423 exhibit line item number (ELIN) for each data requirement to be derived from the management system. Show the data item description number from the DD Form 1664, Data Item Description.

Item 9. State the contract location(s) where the management system is imposed and exceptions (tailoring) are defined. Contractor management systems accepted in lieu of an authorized management system should be identified along with the contract references, and a statement that the contractor system will satisfy the requirement.

16–827.3 Upon receipt of a DD Form 1660, the contracting officer shall verify that the DD Form 1660 has been properly prepared by the requiring office and approved by responsible authority (the head of the Government activity charged with immediate management of the program).

16–827.4 The completed DD Form 1660 shall be included in the solicitation document and the resulting contracts.

16–828 Data Item Description (DD Form 1664).

(a) DD Form 1664 describes a data item to be delivered by a contractor. Completed forms are available as indicated in 1–1203.

(b) Preparation instruction on the DD Form 1664 by specifically identifying and describing the data, or by indicating the source documents for preparation of the data item, or when the data item is adequately described in another document, such as specification; the document(s) may be referenced, and the description of the data need not be repeated on the DD Form 1664. When the reference method is practical, the DD Form 1664 will contain:

(i) specific paragraph identification of the preparation instructions contained in the referenced document(s), and

(ii) additions, deletions or deviations to the referenced document(s) to meet the needs of a contract.

(c) Requirements to perform work tasks (i.e., perform systems analyses, perform tests, conduct reviews, etc.) which may result in the generation of data, must appear in the contract statement of work, and not on the DD Form 1664. Likewise, acceptance or inspection designations will not be included on the DD Form 1664, but evaluation criteria for acceptance of the data may be included.

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SECTION XVII

EXTRAORDINARY CONTRACTUAL ACTIONS

17-000 Scope of Section. As distinguished from the normal principles and procedures set forth in the other sections of ASPR, this Section establishes uniform regulations for entering into and amending or modifying contracts to facilitate the national defense under the extraordinary emergency authority granted by the Act of 28 August 1958, as amended, (Public Law 85-804); 72 Stat. 972, as amended by 87 Stat. 605 (1973); 50 U.S.C. 1431-1435, as amended, set forth in 17-501, hereinafter referred to as "the Act," and Executive Order No. 10789, dated 14 November 1958, as amended, (23 F.R. 8897, as amended), set forth in 17-502, hereinafter referred to as "the Executive Order." The Act empowers the President to authorize departments and agencies exercising functions in connection with the national defense, to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. This extraordinary authority may be exercised only in the unusual circumstances described in this Section. This Section does not cover advance payments (see Defense Contract Financing Regulations, Appendix E).

17-001 Approval of Regulations and Deviations. The Executive Order authorizes the Secretaries of Defense, the Army, the Navy and the Air Force, respectively, under regulations prescribed or approved by the Secretary of Defense, to exercise this authority. This Section XVII has been concurred in by the Secretaries of the Army, the Navy, and the Air Force in accordance with 1-101 and 1-105 and has been approved by the Secretary of Defense. Notwithstanding 1-105, any amendments to this Section developed in accordance with the procedure specified in 1-105, and any deviations proposed to be made under the procedure specified in 1-109, shall be approved by the Secretary of Defense.

EXTRAORDINARY CONTRACTUAL ACTIONS

Part 1—General

17-101 Previous Authority. Title II of the First War Powers Act, as amended and extended, expired 30 June 1958. Executive Order No. 10210, dated 2 February 1951; and the following joint regulations are thus no longer applicable:

(i) "Regulations Governing the Exercise of Certain Authority Granted by Title II of the First War Powers Act, as Amended, and Executive Order No. 10210, Issued Thereunder", dated 21 February 1951; and the amendment thereto dated 12 January 1954;

(ii) "Coordinated Procedures to be Applied by the Army, Navy and Air Force for the Disposition of Requests by Contractors under Title II of the First War Powers Act, as Amended by Public Law 921, 81st Congress", dated 23 June 1951; and

(iii) "Regulations Governing the Authority to Contract Under Title II of the First War Powers Act, as Amended, and Executive Order No. 10210, Issued Thereunder", dated 17 July 1951.

17-102 General Policy.

(a) The authority conferred by the Act shall be delegated by the Secretaries of the military departments in a manner which will best serve the logistic functions of the departments and, at the same time, retain control over the exercise of the authority at a level high enough to insure uniformity of action.

(b) The authority conferred by the Act shall not be utilized so as to encourage carelessness and laxity on the part of persons engaged in the defense effort nor be relied upon by a military department when other adequate legal authority exists in the department.

(c) The actions authorized under the Act shall be processed as expeditiously as practicable consistent with the care, restraint, and exercise of sound judgment, appropriate to such extraordinary authority. The interests of other departments and agencies of the Government shall be considered.

17-103 Types of Actions. Three types of actions may be taken by or pursuant to the direction of an approving authority under the Act. These are— (i) contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments (see Part 2 below); (ii) making advance payments (not covered by this Section); and (iii) exercise of "residual powers," which refer to all other authority under the Act (see Part 3 below).

17-104 Definitions.

(a) The term "*approving authority*" as used in this Section means a Contract Adjustment Board, or an officer or official having authority to approve actions under the Act. This authority is distinguished from authority to take appropriate contractual action pursuant to such approval.

(b) The term "*Secretarial level*" as used in this Section means an official at or above the level of an Assistant Secretary or his Deputy, and a Contract Adjustment Board established by the Secretary concerned.

Part 2—Requests for Contractual Adjustment

17-200 Scope. This Part provides for the establishment of a Contract Adjustment Board within each Military Department and describes certain delegations of authority. It also sets forth standards and the procedures for disposition of requests for contractual adjustment under the Act.

17-201 Authority of the Secretaries and the Directors of DSA, DCA, DNA, NSA, and DMA.

(a) The Secretary of each Department may delegate in writing his authority under the Act and the Executive Order, subject to the following limitations:

(i) authority to approve actions under the Act obligating the United States in an amount in excess of $50,000 shall not be delegated below the Secretarial level; and

(ii) authority to approve any amendment without consideration which increases the stated contract price or unit price may not be delegated below the Secretarial level except in extraordinary cases or classes of cases as to which the Secretary involved finds that there are special circumstances clearly justifying delegation to a lower level.

(b) The Directors of the Defense Supply Agency, the Defense Communications Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Mapping Agency may exercise authority under the Act and the Executive Order in all cases obligating the United States in the amount of $50,000 or less, and in disapproving proposed actions in any amount. This authority may be redelegated, consistent with the provisions of this Section. Recommendations for payments in excess of $50,000 will be submitted by the Directors to the Assistant Secretary of Defense for Installations and Logistics for approval.

(c) The delegations described in 17-202 and 17-203 shall not be construed as limiting the authority of the Secretaries or the Directors to modify or make other delegations. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Installations and Logistics at the time of issuance.

17-202 Contract Adjustment Boards.

17-202.1 *Organization*. A Contract Adjustment Board has been established within each Military Department by the Secretary thereof. Such Boards consist of a Chairman and not less than two nor more than six other members, one of whom may be designated the Vice-Chairman. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total Board membership constitutes an action of the Board. Alternates may be appointed to act in the absence of members.

17-202.2 *Authority*. The Contract Adjustment Board in each Department has been given authority to approve, authorize and direct appropriate action under the standards set forth in 17-204 in any case submitted to it by an officer or official listed in 17-203 or otherwise designated by the Secretary concerned, and to make all determinations and findings which are necessary or appropriate. Where deemed necessary to the exercise of the foregoing authority, such Boards may authorize any appropriate action not precluded by 17-205, including the modification or release of any obligations. The decisions of such Boards shall be final, but each Board may reconsider and modify, correct, or reverse any of its previous decisions. Such Boards shall determine and adopt their own procedures and have authority to do all acts and things necessary or appropriate for the conduct of their functions.

17-203 Authority of Other Officers and Officials.

(a) The following authority has been delegated to the officers and officials listed in paragraph (b) below:

- (i) authority to deny any request for contractual adjustment under this Part;
- (ii) subject to the limitations set forth in 17-205, authority to approve, authorize, and direct an appropriate action, and to make all determinations and findings which are necessary or appropriate, in the examples of mistake and informal commitment described in 17-204.3 and 17-204.4, including, where necessary thereto, authority to modify, release, rescind, or cancel obligations of any sort and to extend delivery and performance dates; and
- (iii) authority to submit to the cognizant Contract Adjustment Board for its determination, together with his recommendation—
  - (A) any case where the officer or official recommends a specific adjustment which he does not have authority to approve under (ii) above; and
  - (B) any doubtful or unusual case.

The foregoing authority may be redelegated only with the written approval of the Secretary or the Director concerned.

(b) The delegations of authority which have been made are as follows:

- (i) The Army:
  - Heads of procuring activities;
- (ii) The Navy:
  - Heads of procuring activities;
- (iii) The Air Force:
  - Deputy Chief of Staff, Systems and Logistics;
  - Director of Procurement Policy, AF/LGP;
  - Commander, Air Force Logistics Command;
  - Commander, Air Force Systems Command;
  - and
  - Heads of all other procuring activities for cases which do not obligate the Government in excess of $5,000;
- (iv) The Defense Supply Agency:
  - Heads of procuring activities;
- (v) The Defense Nuclear Agency:
  - Deputy Director Operations and Administration, Chief, Office of Procurement for cases which do not obligate the Government in excess of $5,000;

  and
- (vi) The Defense Mapping Agency: Deputy Director.

17-204 Standards for Deciding Cases.

17-204.1 *General*. The mere fact that losses occur under a Government contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Act. Whether, in a particular case, appropriate action such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment, will facilitate the national defense is a matter of sound judgment to be made on the basis of all of the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which action may be appropriate, examples of certain cases or types of cases where action may be proper are set forth in 17-204.2 through 17-204.4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may warrant denial of the request. These examples are not intended to exclude other cases where a Contract Adjustment Board determines that the circumstances warrant action.

17-204.2 *Amendments Without Consideration*.

(a) Where an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be adjusted but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a defense contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus, where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some adjustment in the contract.

17-204.3 *Mistakes*. A contract may be amended or modified to correct or mitigate the effect of a mistake, including the following examples:

- (i) a mistake or ambiguity which consists of the failure to express or to express clearly in a written contract the agreement as both parties understood it;
- (ii) a mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and
- (iii) a mutual mistake as to a material fact.

Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

17-204.4 *Informal Commitments*. Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an officer or official of a Military Department and relying in good faith upon the apparent authority of the officer or official to issue such instructions, has arranged to furnish or has furnished property or services to a Mili-

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tary Department or to a defense contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

17-205 Limitations Upon Exercise of Authority.

17-205.1 *General Limitations.*

(a) The Act is not authority for:

(i) the use of the cost-plus-a-percentage-of-cost system of contracting;

(ii) the making of any contract in violation of existing law relating to limitation of profit or fees;

(iii) the negotiation or purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding; or

(iv) the waiver of any bid, payment, performance or other bond required by law.

(b) No contracts, amendments, or modifications shall be entered into under the authority of the Act:

(i) unless a finding is made that the action will facilitate the national defense;

(ii) unless other legal authority in the Department concerned is deemed to be lacking or inadequate;

(iii) which will obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60 day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60 day period; and

(iv) except within the limits of the amounts appropriated and the statutory contract authorization. However, indemnification agreements authorized by the Secretary are not limited to amounts appropriated or to contract authorization nor are the provisions of (iii) above applicable to such agreements.

(c) No contract shall be amended or modified:

(i) unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged; and

(ii) if the contract was negotiated under 10 U.S.C. 2304(a)(15), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

(d) No informal commitment shall be formalized (i) unless a request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment and (ii) unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

17-205.2 *Additional Limitations Upon Authority Below Secretarial Level.* The exercise of authority by officers and officials below the Secretarial level pursuant to 17-203(a)(ii) shall be subject to the following additional limitations:

- (i) the action shall not deal with or directly affect any matter which has been submitted to the General Accounting Office;
- (ii) the action shall not obligate the Government in an amount in excess of $50,000;
- (iii) the action shall not release a contractor from performance of an obligation—
  - (A) priced in excess of $50,000; or
  - (B) where reprocurement is contemplated, unless the approving authority finds that the estimated actual or potential increase in cost to the Government will not exceed $50,000;
- (iv) the action shall not involve the disposal of Government surplus property;
- (v) mistakes shall not be corrected by action obligating the Government in an amount in excess of $1,000 unless notice of the mistake is received by the contracting officer prior to final payment; and
- (vi) the correction of a contract because of a mistake in its making shall not result in increasing the original contract price above the next lowest responsive bid of a responsible bidder in the case of a formally advertised procurement, or the amount of the next lowest responsive proposal of a responsible offeror considered in the case of a negotiated procurement.

17-206 Contractual Requirements. Every contract entered into or amended or modified pursuant to this Section shall contain:

- (i) a citation of the Act and Executive Order;
- (ii) a brief statement of the circumstances justifying the action;
- (iii) a recital of the finding that the action will facilitate the national defense;
- (iv) the contract clause "*Covenant Against Contingent Fees,*" in 7-103.20;
- (v) the contract clause "*Examination of Records by Comptroller General*" in accordance with 7-104.15;
- (vi) the contract clause "*Equal Opportunity*" in 7-103.18 when required under Section XII, Part 8;
- (vii) the contract clause "*Assignment of Claims*" in 7-103.8; and
- (viii) if otherwise applicable, the contract clauses "*Walsh-Healey Public Contracts Act,*" "*Davis-Bacon Act,*" Compliance with Copeland Regulations, and "*Contract Work Hours and Safety Standards Act—Overtime Compensation,*" as set forth respectively in 7-103.17 and 7-602.23.

17-207 Submission of Requests by Contractors.

17-207.1 *Filing Requests.* Any person seeking an adjustment under standards set forth in 17-204 (hereinafter called the "contractor") may file a request in duplicate with the cognizant contracting officer or his duly authorized representative. If a request is filed with an administrative contracting officer, it shall be forwarded promptly to the procuring contracting officer for appropriate action. If such filing is impracticable, requests will be deemed to be properly filed if filed with the following addresses for forwarding to the cognizant contracting officer:

(i) in the Army,
the Head of Procuring Activity listed in 1-201.14 appearing to be cognizant of the contract or commitment involved;

(ii) in the Navy,
the Head of Procuring Activity listed in 1-201.14 appearing to be cognizant of the contract or commitment involved;

(iii) in the Air Force,
Commander Air Force Logistics Command
ATTN: PPC
Wright-Patterson Air Force Base, Ohio;

(iv) in the Defense Supply Agency, Commanders of the Defense Supply Centers concerned;

(v) in the Defense Communications Agency,
Director, DCA
ATTN: Code 260;

(vi) in the Defense Nuclear Agency,
Director, DNA,
ATTN: OAPR; and

(vii) in the National Security Agency,
Director, NSA;

(viii) in the Defense Mapping Agency,
Director, DMA, Attn: LO.

17-207.2 *Form of Requests by Contractors.* The contractor's request shall normally consist of a letter to the contracting officer stating:

(i) the precise adjustment requested;

(ii) the essential facts summarized in chronological narrative form;

(iii) the contractor's conclusions based on such facts and showing, in terms of the standards set forth in 17-204, why the contractor considers himself entitled to the adjustment requested;

(iv) whether all obligations have been discharged under the contracts involved;

(v) whether final payment has been made under the contracts involved;

(vi) whether any proceeds from the request will be subject to any assignment or other transfer, and to whom; and

(vii) whether the contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

17-207.3 *Records.* At the time the request is filed, a preliminary record as described in Part 4 of this Section shall be prepared by the activity responsible for the case under 17-203. A copy of each such record prepared during each month shall be forwarded within 30 days after the close of the month as follows:

(i) Army activities, to the Recorder, Army Contract Adjustment Board, Office of the Assistant Secretary of the Army (Installations and Logistics);

(ii) Navy activities, to the Chief of Naval Material (Navy Contract Adjustment Board);

(iii) Air Force activities, to the Air Force Contract Adjustment Board, Office of the Assistant Secretary of the Air Force (I&L), through HQ USAF, Director of Procurement Policy;

(iv) Defense Supply Agency activities, to Headquarters, DSA;

(v) Defense Communications Agency activities, to Headquarters, DCA;

(vi) Defense Nuclear Agency activities, to Headquarters, DNA; and

(vii) Defense Mapping Agency activities, to Headquarters, DMA.

17-207.4 *Facts and Evidence.*

(a) *General.* The contracting officer, or any officer, official, or Contract Adjustment Board, having authority to act upon the contractor's request, shall, where considered appropriate, request the contractor to furnish additional facts, and evidence as described in this paragraph (a), and, in addition, where applicable, as described in (b), (c), (d) or (e) below (in complying with such requests, the contractor may also submit other statements and evidence which he may consider helpful to the case):

(i) if written contracts are involved, a brief description of the contracts, indicating the dates of execution and amendments thereto, the items being procured, the price or prices and delivery schedule and revisions, thereof, and such other special contractual provisions as may be relevant to the request;

(ii) a history of performance indicating when work under the contracts or commitments was begun, the progress made to the present, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof;

(iii) a statement of payments received, payments due, and payments yet to be received or to become due, including advance and progress payments, and amounts withheld by the Government, and information as to other obligations of the Government, if any, which are yet to be performed under the contract;

(iv) a statement giving a detailed analysis of the monetary elements of the request including precisely how the actual or estimated dollar amount of the request was arrived at, the effect of approval or denial on the contractor's profits before Federal income taxes, and whether the costs for which reimbursement is requested have been included as a part of his gross costs in statutory renegotiation proceedings, together with the contractor's renegotiation status for the relevant years;

(v) if a written contract is involved, a statement of the contractor's understanding of why the subject matter of the request cannot now, and could not at the time it arose, be disposed of under the terms of the contract itself;

(vi) the best evidence available to the contractor in support of any facts alleged by the contractor, including contemporaneous memoranda, correspondence, affidavits, and any other material tending to establish matters of fact;

(vii) relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, including such additional financial data as is necessary to explain fully and to support the monetary elements of the request for adjustment;

(viii) a list of persons (within the Department of Defense, in the employ of the contractor, or otherwise connected with the contract) who have some factual knowledge of the subject matter, including where possible the name, office or title, address and telephone number of each such person;

(ix) a statement and evidence of steps taken to mitigate loss and reduce claims to a minimum; and

(x) such other statements or evidence as may be requested by the contracting officer.

(b) *Amendments Without Consideration Under 17-204.2(a).* In addition to the facts and evidence listed in paragraph (a) above, where a request involved possible amendment without consideration, and essentiality to the national defense is a factor, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(i) a statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(ii) a statement and evidence of the contractor's present estimate of total costs under the contracts involved if enabled to complete, broken down between costs accrued to date of request, and runout costs, and as between costs for which the contractor has made payment and those for which he is indebted at the time of the request;

(iii) a statement and evidence of the contractor's estimate of the final price of the contracts involved giving effect to all escalation, changes, extras and the like, known or contemplated by the contractor;

(iv) a statement of any claims known or contemplated by the contractor against the Government involving the contracts in question, other than those stated in response to (iii) above;

(v) an estimate of the contractor's total profit or loss under the contracts involved if enabled to complete at the estimated final contract price (see (iii) above) broken down between profit or loss to date, and runout profit or loss;

(vi) an estimate of the total profits from other Government business, and all other sources, during the period from the date of the first contract involved to the estimated date of completion of all the contracts involved;

(vii) a statement of the amount of any tax refunds and an estimate of those anticipated during or for the period from the date of the first contract involved through the estimated completion date of all the contracts involved;

(viii) a statement in detail as to efforts the contractor has made to obtain funds from commercial sources to enable him to complete performance of the contracts involved;

(ix) a statement of the minimum amount necessary as an amendment without consideration to enable the contractor to complete performance of the contracts involved, and the detailed basis for that amount;

(x) an estimate of the time required to complete each contract, if the request is granted;

(xi) a statement of the factors which have caused the loss under the contracts involved;

(xii) a statement as to the course of events anticipated if the request is denied;

(xiii) balance sheets, preferably certified by a certified public accountant, as of the end of the contractor's fiscal year first preceding the date of the first contract, as of the end of each subsequent fiscal year, as of the date of the request, and projected as of the date of completion of all the contracts involved assuming the contractor is enabled to complete the contracts at the final prices estimated pursuant to (iii) above, together with income statements for annual periods subsequent to the date of the first balance sheet (Balance sheets and income statements should be both consolidated, and by affiliates, and should show all transactions between the contractor and his affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner); and

(xiv) a list of all salaries, bonuses and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments Without Consideration Under 17–204.2(b).* In addition to the facts and evidence listed in paragraph (a) above, where a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(i) a clear statement of the precise Government action which the contractor considers caused a loss under the contract with evidence to support each essential fact;

(ii) a statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit;

(iii) the estimated total loss suffered under the contract, with detailed supporting analysis; and

(iv) the estimated loss resulting from the Government action, with detailed supporting analysis.

(d) *Correction of Mistakes.* In addition to the facts and evidence listed in paragraph (a) above, where a request involves possible correction of a mistake, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(i) a statement and evidence of the precise mistake or error that was made, the ambiguity that exists, or the misunderstanding that arose, showing of what it consisted and how it occurred, and the intention of the parties;

(ii) a statement explaining when the mistake was discovered, when notice of mistake was given to the contracting officer, and whether given before completion of work under, or the effective date of termination of, the contract;

(iii) an estimate of loss or profit under the contract with detail supporting analysis; and

(iv) an estimate of the increase in cost to the Government resulting from the adjustment requested with detailed supporting analysis.

(e) *Formalization of Informal Commitments.* In addition to the facts and evidence listed in paragraph (a) above, where a request involves possible formalization of an informal commitment, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(i) copies of any written instructions or assurances, or a statement under oath as to any oral instructions or assurances made to the contractor, with identification of the Government officer or official making such statement;

(ii) a statement as to when the property or services were furnished or arranged to be furnished, and to whom;

(iii) evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances which led him so to rely, and that the contractor intended, at the time of performing the work, to be compensated directly for it by the Government and did not anticipate recovery of the costs in some other way;

(iv) a cost breakdown supporting the amount claimed as a fair compensation for the work performed; and

(v) a statement and evidence of why it was impracticable to provide for the work performed in an appropriate contractual instrument.

17-208 Processing Cases.

17-208.1 *Investigation.* Officers and officials listed in 17-203(b) shall be responsible in all cases for making a thorough investigation of all facts and issues relevant to each case. Facts and evidence shall be obtained from contractor and Government personnel, and shall include signed statements of material facts within the knowledge of individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts. The investigation shall establish (i) the facts essential to meeting the standards for deciding the particular case and (ii) the essential facts as to who has authority to approve the request.

17-208.2 *Disposition Below Secretarial Level.*

(a) *Disposition.* In each case where the request for relief is denied or approved finally below Secretarial level (see 17-203), the approving authority shall sign a Memorandum of Decision, whether approving or denying the request, which memorandum shall be dated and shall contain the following:

(i) the name and address of the contractor, the contract identification, and the nature of the request;

(ii) the decision reached and the actual cost or estimated potential cost, if any, of the decision;

(iii) a concise description of the property or services involved;

(iv) a statement of the circumstances justifying the decision;

(v) if some adjustment action is approved, a statement in substantially the following form, "I find that the action authorized herein will facilitate the national defense"; and

(vi) identification of any of the foregoing information which is classified "Confidential" or higher.

(b) *Records.* Each of the following documents shall be submitted to the addresses set forth in 17-207.3 within 30 days after the close of the month during which it is executed:

(i) two copies of the Memorandum of Decision;

(ii) one copy of the contractual document implementing any decision, approving contractual action; and

(iii) one copy of a final record, as prescribed in Part 4 of this Section, prepared by the activity responsible for the case under 17-203.

Item (ii) will not be submitted in the case of the Army.

17-208.3 *Submission of Cases to the Contract Adjustment Board.*

(a) *Statement to Board.* Cases to be submitted for consideration of the cognizant Contract Adjustment Board shall be forwarded by means of a letter signed by the officer or official responsible for the case under 17-203. The letter shall state:

(i) the nature of the case;

(ii) the basis for the Board's authority to act under 17-202 and 17-203;

(iii) the findings of fact essential to the case (see 17-207.4) arranged chronologically with cross references to supporting enclosures;

(iv) the conclusions drawn from applying the standards for deciding cases, as set forth in 17-204, to the findings of fact; and

(v) the disposition recommended, and, if contractual action is recommended, the opinion of the signer that such action will facilitate the national defense; and

(vi) where the case involves a Military Assistance Program purchase within the scope of 6-704.1(ii) a recommendation as to the impracticability of inclusion of the Examination of Records by Comptroller General clause set forth in 7-104.15 (see 17-206(v) and 6-704).

The letter shall enclose copies of the contractor's request, the evidentiary materials, and all indorsements, reports and comments of cognizant Government officials. The letter and enclosure shall be in duplicate.

(b) *Amendments Without Consideration Under 17-204.2(a).* A letter to the Board recommending an amendment without consideration under the standards of 17-204.2(a), should, in addition to the requirements of paragraph (a) above, ordinarily cover, with supporting data as appropriate, the findings and conclusions with respect to all of the items set forth in 17-207.4(b) and, in addition, findings as to:

(i) the contractor's performance record, including the quality of product, rate of production and promptness of deliveries;

(ii) the importance to the Government, particularly to the operating forces, of the performance of the contract by contractor and the importance of the contractor to the national defense;

(iii) forecast of future contracts with the contractor; and

(iv) other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(c) *Forwarding to Boards*. Cases to be submitted to the Boards shall be forwarded through the following channels.

(i) In the Army and the Navy, normally, each case shall be sent from the Head of a Procuring Activity directly to the Board.

(ii) In the Air Force, normally, each case shall be sent through the Deputy Chief of Staff, Systems and Logistics, Headquarters, USAF, ATTN: AFLGPM, and after review there, to the Board.

(iii) In the Defense Supply Agency, each case shall be sent to Headquarters, DSA for further processing.

(iv) In the Defense Communications Agency, each case shall be sent to the Headquarters, DCA, ATTN: Code 260, for further processing.

(v) In the Defense Nuclear Agency, each case shall be sent to the Headquarters, DNA, ATTN: OAPR, for further processing.

(vi) In the Defense Mapping Agency, each case shall be sent to Headquarters, DMA, ATTN: LO, for further processing.

17-208.4 *Processing by Contract Adjustment Boards.*

(a) *Disposition*. Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by 17-208.2(a) (i) through (v). The Memorandum of Decision shall omit any information classified "Confidential" or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

(b) *Records*. When the Board decisions are implemented, the documents listed in 17-208.2(b)(ii) and (iii) shall be prepared and submitted to the cognizant Board. The activity which forwarded the case to the Board shall be responsible for the preparation and submission of these documents.

17-208.5 *Maintenance of Records*. The records required by 17-207.3, 17-208.2(b), and 17-208.4(a) and (b) shall be maintained in the Army, Navy, and Air Force, by the respective Boards; and in the Defense Supply Agency, Defense Communications Agency, Defense Nuclear Agency, the National Security Agency, and the Defense Mapping Agency, by the respective Headquarters.

17-208.6 *Interdepartmental Coordination*.

(a) *General*. Where a case involves matters of interest to more than one department or agency, any interested Military Department should maintain liaison with other Military Departments and other departments and agencies of the Government and take such joint action as may be proper under the circumstances, including holding joint meetings or hearings.

(b) *Cases Involving Funds of Other Military Departments*. Requests for adjustment within any category, where the funds of other than the procuring Department may be required, shall not be approved by the procuring Department until advice is requested and received from the requiring Department that additional funds will be made available. The request for such advice shall disclose the following data:

(i) contractor's name;
(ii) MIPR number;
(iii) contract number,
(iv) amount of proposed relief;
(v) brief description of the procurement; and
(vi) accounting classification--fund citation.

If such additional funds are made available, the action to be taken on a particular request, however, shall be solely the responsibility of the Department considering such request.

(c) *Amendments Without Consideration Involving Other Military Departments.* Requests for amendments without consideration, where essentiality to the national defense is an issue and involves another Military Department, shall not be finally determined by one Department until advice on such issue is requested and received from the other Department. When such advice is received, the responsibility for taking the appropriate action, if any, shall be with the Department considering the request.

Part 3—Residual Powers

17-300 Scope. This Part describes the delegations of authority, and the standards and procedures for the exercise of residual powers under the Act. The term "*residual powers*" as used in this Part includes all the authority under the Act except that which is covered by Part 2 hereof and the authority to make advance payments.

17-301 Delegation of Authority. Authority to take actions under the residual powers of the Act is vested in the Secretary of each Department and may be defined and delegated in writing by him within his Department; *provided*, however, that (i) authority to approve actions obligating the United States in an amount in excess of $50,000 shall not be delegated below the Secretarial level; (ii) authority to approve actions obligating $50,000 or less shall not be delegated below the Head of a Procuring Activity; and (iii) authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary. Copies of all delegations shall be transmitted to the Assistant Secretary of Defense (Installations and Logistics) at the time of issuance.

17-302 Standards for Using Residual Powers. Subject to the limitations contained in 17-205.1, the residual powers may be used in accordance with the policies set forth in 17-102 when such use is deemed necessary and appropriate under all the circumstances. When granting authority to include an indemnification clause in a contract or subcontract, the Secretary may require the contractor so indemnified to provide and maintain financial protection of such type and in such amounts as the Secretary determines to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the Secretary shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial responsibility, and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

17-303 Procedures.

17-303.1 *General Procedures.*

(a) All proposals for the exercise of residual powers shall be forwarded except as Departmental regulations may otherwise provide through normal channels within the Military Departments to the Assistant Secretary or other approving authority.

(b) The approving authority shall sign a Memorandum of Approval containing the information set forth in 17-208.2(a).

(c) Every contract entered into or amended or modified under the residual powers shall comply with the provisions of 17-206.

17-303.2 *Special Procedures for Unusually Hazardous or Nuclear Risks.*

(a) Contractor requests for indemnification provisions in DoD contracts should be submitted to the cognizant contracting officer and shall include at least the following:

(i) an identification of the procurement for which the indemnification provisions are requested;

(ii) an identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested. This requirement shall include a statement indicating the manner in which the contractor would be exposed to such risk;

(iii) a statement of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear in nature. The statement shall be executed by a corporate official who has authority contractually to bind the contractor and shall include:

- (A) names of the insurance companies, policy numbers, and expiration dates;
- (B) types of insurance provided (including a statement of the extent to which the contractor is presently self-insured and any intentions to further self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;
- (C) dollar limits per occurrence and annual aggregate, or any other limitation, for relevant segments of the total insurance coverage;
- (D) deductible(s), if any, applicable to losses under the policies;
- (E) any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and
- (F) applicable workmen's compensation insurance coverage.

When significant changes in a contractor's insurance coverage take place or the dollar coverage varies by at least plus or minus 10% after the contractor submits his indemnification request and before approval, a brief description of these changes shall be submitted to the contracting officer.

(iv) a statement as to the controlling or limiting factors for the establishment of the amount of financial protection to be provided or maintained by the contractor; to include information as to the availability, cost and terms of additional insurance or other forms of financial protection;

(v) a statement as to whether the contractor's insurance program has been approved or accepted by any Agency or Department of the Federal Government; and whether the contractor has an indemnification agreement with respect to similar risks under any other Government program, and if so a brief description of any limitations thereunder;

(vi) if the corporation is a division or subsidiary of a parent corporation, the existing insurance coverage of the parent corporation that bears on the risks for which the contractor is seeking indemnification. A description of the precise legal relationship between parent and subsidiary or division should be included.

(b) The contracting officer, with the assistance of legal counsel and cognizant program office personnel, shall review the contractor's request and ascertain that all information required is provided. If the contracting officer, after consideration of all the facts and evidence presented, decides to deny the contractor's request, he shall notify the contractor promptly that the request is denied and the reasons therefor. If the contracting officer recommends approval, he shall forward the contractor's request, as might be modified by negotiation between the contracting officer and the contractor, through channels for final processing to the Secretary. The contracting officer's submission shall include all information submitted by the contractor and the following:

(i) an identification of the proposed procurement or program together with all pertinent contract or program information, including the period of performance locations and facilities;
(ii) a definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, together with a statement reflecting agreement of the parties in such definition;
(iii) a statement by responsible authority that the indemnification action would facilitate the national defense;
(iv) a statement that the contract will involve unusually hazardous or nuclear risks that could impose a liability upon the contractor in excess of financial protection reasonably available;
(v) a statement that the contractor is in compliance with applicable Government safety requirements;
(vi) whether there is need for extension to subcontractors; and
(vii) a statement of any significant changes in a contractor's insurance coverage occurring during processing of the indemnification requests.

(c) Approval of a request to include an indemnification provision in a contract shall be by a Memorandum of Approval executed by the Secretary. The definition of unusually hazardous or nuclear risks approved by the Secretary shall be incorporated in the contract, along with the applicable Indemnity clause required by 10-702.

(d) When authorized by the Secretary in the Memorandum of Approval and when justified by the circumstances, the contracting officer may approve the contractor's written request to provide for the indemnification of subcontractors using the same procedures as those required of contractors.

17-304 Records. The respective Contract Adjustment Boards in the Army, Navy and Air Force; and the Headquarters, Defense Supply Agency, Defense Communications Agency, Defense Nuclear Agency, and the Defense Mapping Agency, shall be responsible for maintaining two copies of each Memorandum of Approval required by 17-303(b).

Part 4—Records of Requests and Dispositions

17-400 Scope of Part. In order that adequate records of actions by each Department pursuant to the Act may be maintained, 17-207.3 requires the preparation of a preliminary record when each request is filed for an adjustment under the standards set forth in 17-204; and 17-208.2(b)(iii) and 17-208.4(b) require the preparation of a final record indicating the disposition of the request. This Part describes in detail the information which should be included in these records. A suggested format for the records is shown in 17-403. It is designed so that the information required for the preliminary and final record with respect to each request may be combined on the same form.

17-401 Preliminary Records. Each preliminary record prepared pursuant to 17-207.3 should contain the following information:

(i) *Type of Record*. The fact that the record is a preliminary record should be indicated.

(ii) *Date of Contractor's Request*. The date on the face of the contractor's request for adjustment should be inserted.

(iii) *Date Received by Government*. The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted.

(iv) *Name and Address of Contractor*. The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated.

(v) *Name and Address of the Contractor's Representative, If Any*. If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted.

(vi) *Cognizant Contracting Officer or Office*. The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted.

(vii) *Procuring Activity*. The name of the procuring activity with jurisdiction over the contracting officer or office referred to in (vi) above, should be inserted.

(viii) *Property or Service Involved*. A brief description of the item being procured or services being rendered should be inserted.

(ix) *Extent of Performance as of Date of Request*. A brief indication, as of the date of the request, of the degree of completion of the contract should be inserted, for example, 50 percent completed, or performance not yet begun; if work is completed, indicate date of completion and whether final payment has been made.

(x) *Contract Number and Date*. The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted.

(xi) *Advertised or Negotiated.* Whether the contract was entered into pursuant to advertising or negotiation should be indicated. If negotiated, the specific authority should be indicated; example: "Neg.—10 U.S.C. 2304(a)(14)".

(xii) *Type of Contract.* The type of contract involved (see Section III, Part 4) should be inserted; e.g., FFP (firm fixed-price), FPI (fixed-price incentive), CPFF (cost-plus-fixed-fee), or T&M (time and materials).

(xiii) *Category of Case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be indicated. If the case involves two or more categories, each should be indicated; however, the most significant category involved should be listed first.

(xiv) *Amount or Description of Request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease". If the request seeks an adjustment which cannot be expressed in monetary terms, then some brief description of it should be inserted, such as "Cancellation" or "Modification of Terms". The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request.

(xv) *Date of This Record.* The date on which the record is signed and forwarded should be inserted.

(xvi) *Signature.* The record should be signed by an authorized representative of the reporting authority.

17–402 Final Records. Each final record prepared pursuant to 17–208.2(b)(iii) or 17–208.4(b) should contain the information listed in 17–401 (ii) through (xvi) and, in addition, should contain the following information:

(i) *Type of Record.* The fact that the record is a final record should be indicated.

(ii) *Action Below Secretarial Level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in 17–401(xiv). The date should correspond with the date of the Memorandum of Decision or of the Letter forwarding the request to the Board.

(iii) *Action by Contract Adjustment Board and Date.* The disposition of the case by the Contract Adjustment Board and the date thereof should be indicated in a manner similar to that described in (ii) above.

(iv) *Implementation and Date.* The contractual action or correspondence which implements the decision of the approving authority or of the Board should be inserted as follows: "amendment", "new contract," or "letter of denial."

EXTRAORDINARY CONTRACTUAL ACTIONS

17-403 Sample Format for Preliminary and Final Records. The preliminary and final records described in 17-401 and 17-402 may be prepared in a format substantially as follows:

☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85-804		FINAL ☐
DATE OF REQUEST			DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS			☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY			
COGNIZANT CONTRACTING OFFICER OR OFFICE		PROCURING ACTIVITY	
PROPERTY OR SERVICE INVOLVED		EXTENT OF PERFORMANCE AS OF DATE OF REQUEST	
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED	TYPE OF CONTRACT
CATEGORY OF CASE		AMOUNT OR DESCRIPTION OF REQUEST	
ACTION BELOW SECRETARIAL LEVEL			DATE
ACTION BY CAB			DATE
IMPLEMENTATION			DATE
ADDITIONAL DATA OR REMARKS			
DATE THIS RECORD SIGNED		SIGNATURE	

Part 5—Act and Executive Order

17-500 Scope of Part. This Part sets forth in full the Act and Executive Order.

17-501 Act of August 28, 1958, as amended, (Public Law 85-804); 72 Stat. 972, as amended by 87 Stat. 605 (1973); 50 U.S.C. 1431-1435, as amended:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this Section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this Section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60 day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60 day period.

SEC. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

- (a) the use of the cost-plus-a-percentage-of-cost system of contracting;
- (b) any contract in violation of existing law relating to limitation of profits;
- (c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;
- (d) the waiver of any bid, payment, performance, or other bond required by law;
- (e) the amendment of a contract negotiated under section 2304(a)(15), title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or
- (f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

SEC. 3 (a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

SEC. 4 (a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

- (1) name the contractor;
- (2) state the actual cost or estimated potential cost involved;
- (3) describe the property or services involved; and
- (4) state further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

SEC. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate."

17-502 Executive Order 10789 of November 14, 1958 (23 Fed. Reg. 8897) as amended by Executive Order 11051, dated 27 September 1962, Executive Order 11382 of November 28, 1967, and Executive Order 11610 of July 22, 1971:

"AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL-DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

Part 1—Department of Defense

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

(a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise (except as provided in subparagraph (b)(2)). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial responsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b) (1) Subparagraph (a) shall apply to claims (including reasonable expenses of litigation and settlement) or losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contractor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, *provided* that all such arrangements were entered into pursuant to regulations prescribed or approved by the Secretaries of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lack of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subrogation) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term "*principal officials*".

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, that the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

EXTRAORDINARY CONTRACTUAL ACTIONS

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

- (a) name the contractor;
- (b) state the actual cost or estimated potential cost involved;
- (c) describe the property or services involved; and
- (d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

> "The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. Except as provided in the Act of September 1966, (80 Stat. 850), contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966, (80 Stat. 850), the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

- (a) the use of the cost-plus-a-percentage-of-cost system of contracting;
- (b) any contract in violation of existing law relating to limitation of profits of fees;
- (c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;
- (d) the waiver of any bid, payment, performance, or other bond required by law;
- (e) the amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or
- (f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1011), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

Part II—Extension of Provisions of Paragraphs 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Transportation
Atomic Energy Commission
General Services Administration
National Aeronautics and Space Administration
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER"

SECTION XVIII—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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SECTION XVIII

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

18-000 Scope of Section. This Section sets forth contracting procedures peculiar to construction contracts. Where a contract covers the procurement of both construction and supplies or services, the contract shall include provisions applicable to the predominant part of the work, or shall be divided into parts, and include the provisions appropriate for each part, but see 12-106. It does not contain or cross-reference all provisions of this Regulation which apply to such contracts. Other provisions of this Regulation are also applicable to construction contracts and shall be adhered to where applicable. All contracts mentioned in this Section shall be deemed to mean construction contracts unless specifically described otherwise. Where a provision in this Section is clearly inconsistent with a provision in another section of this Regulation, the provision of this Section shall apply, where construction is involved.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part I—General Provisions

18-101 Definitions. See 1-201.

18-101.1 *Construction* means construction, alteration or repair (including dredging, excavating, and painting) of buildings, structures or other real property. For purposes of this definition, the terms "buildings, structures or other real property" include but are not limited to buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing or assembling of vessels, aircraft or other kinds of personal property.

18-101.2 *Construction Activity* means an activity, at any organizational level of the Military Departments, which has responsibility for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities, and which receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

18-102 Methods of Procurement. The requirements of this Regulation prescribing the use of the formal advertising method of procurement are, in the case of construction contracts, based not only on Chapter 137, Title 10 of the United States Code, but also on the provisions of other applicable legislation such as the annual Military Construction Appropriation Act. Except in special instances, such as overseas construction and construction of a highly classified or experimental nature, construction shall ordinarily be procured by means of formal advertising. Notwithstanding the provisions of 3-206.2, overseas construction may be procured by means of formal advertising provided that the Head of a Procuring Activity, or his designee, determines that the use of formal advertising in strict accordance with Section II of this Regulation is practicable and advantageous to the United States as to a specific country or other geographic area outside the United States, its possessions, and Puerto Rico.

18-103 Sources of Construction Services. Generally, military construction in the United States shall be performed by contract. The following exceptions to this policy are authorized:

(a) Military construction units, other military personnel and Civil Service maintenance personnel may:

(1) Perform construction in periods of emergency arising from fire, flood, explosion, pestilence or other disaster to provide essential facilities for shelter, safety, and protection of personnel and property.

(2) Perform construction where the isolated location of the work makes it impracticable to obtain qualified contractors.

(3) Perform construction where the necessity for obtaining security clearances for contractor personnel introduces unacceptable delays in operational schedules.

(b) Military construction units may perform construction in addition to that set forth in (a) above, but only when the integrity of the unit will be maintained and the project will contribute to the training of the unit for its war-time mission.

(c) Military personnel, other than military construction units, may, in addition to (a), above:

(1) Perform construction in connection with welfare and recreational facilities intended for their own use.

(2) Perform repair incident to maintenance:

- (i) When required for reasons of security.
- (ii) For disciplinary action arising from military offenses.
- (iii) For training and maintaining competence in recognized trade skills.
- (iv) In and around the barracks which they themselves occupy or are about to occupy.

(d) Civil Service maintenance forces may, in addition to (a), above:

(1) Perform construction where the work is of a minor nature.

(2) Perform construction where conditions are such that it is impracticable to prepare plans and specifications.

(3) Perform construction where the work must be performed intermittently to avoid disrupting other important operations.

(4) Perform repair incident to maintenance.

18–104 Subcontracting. In construction work specialty items, such as plumbing, heating and electrical work are usually subcontracted. To assure adequate interest in, and supervision of, *the entire project*, *the prime contractor* shall be required to perform a significant part of the *project* work with *his* own forces. Therefore, all construction contracts estimated to exceed $1,000,000 shall contain the clause set forth in 7–603.15, inserting therein the maximum percentage consistent with customary or necessary specialty subcontracting, and the complexity and magnitude of the work, but not less than 15 percent on housing and not less than 20 percent on other work. Where deemed appropriate, the clause may also be included in contracts estimated not to exceed $1,000,000.

18–105 Time of Performance. In establishing the completion date of a contract, the contracting officer shall give due consideration to:

- (i) the complexity of the project;
- (ii) the construction seasons involved;
- (iii) the required completion date;
- (iv) the capacity of the contractor to perform; and
- (v) the use of multiple completion dates whenever the work is readily separable without substantial detriment to the contractor (but see 18–113 for required revisions to the *Liquidated Damages* clause).

When economies to the Government would result by excluding certain specified periods of time from contractor performance in computing the completion date, the solicitation shall contain the clause in 7–603.38. When multiple completion dates are shown, requests for extensions of time for delays must be evaluated with respect to each item, and the affected completion dates modified where appropriate.

18-106 Responsible Prospective Construction Contractors - Data and Evaluation.

18-106.1 *Minimum Standards for Responsible Prospective Contractors.* In evaluating the responsibility of a prospective contractor, the contracting officer shall consider whether a bid bond has been furnished and performance and payment bonds are to be furnished. Prior to underwriting bid performance and payment bonds, it is normal practice for each surety company to conduct a prequalification survey which examines, verifies and evaluates the contractor's financial resources, technical expertise for the type work involved, management and organization ability, current workload, and capability to complete the contract in the required time. Normally, the contracting officer is not expected to duplicate this effort in conducting the pre-award survey, but should emphasize in addition thereto the evaluation of information which is uniquely available to the Government, such as the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see 1-601), contractor experience lists, and performance evaluations on present or previous contracts with the Government. More extensive pre-award surveys should be conducted when the project requires unique or unusual construction expertise or when information available to the contracting officer indicates that the contractor may not be responsible. (See 1-903 Minimum Standards for Responsible Prospective Contractors, for other pertinent factors.) The responsibility for determination of the extent of pre-award survey appropriate to the circumstances rests with the contracting officer. Where the prospective contractor is a joint venture, the sum of its financial resources and the individual capacities of all its members will be used in determining the responsibility of the joint venture.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

18-106.2 *Performance Evaluation of Construction Contractors.*

(a) *Preparation of Performance Reports.* Performance evaluations of construction contractors shall be made and distributed in accordance with the following procedures and shall be used in making contractor responsibility determinations. (See 1-900.)

This requirement is exempt from report control symbol pursuant to Section VII.B. of enclosure 3 to DoD Directive 5000.19.

(1) For each construction contract of $200,000 or more and each construction contract of $10,000 or more when any element of performance was either unsatisfactory or outstanding, a performance evaluation report shall be prepared, by the cognizant construction activity, at the time of final acceptance of the work, utilizing DD Form 1596, "Construction Contractor Performance Evaluation Report."

(2) Performance evaluation reports will also be prepared, at the time of termination, for every construction contract over $2,000 that is terminated for default and for every construction contract of $100,000 or more that is terminated for the convenience of the Government.

(3) The head of each procuring activity that awards construction contracts shall establish procedures within his command to assure that fully qualified personnel prepare and review these reports. Normally, the evaluating official should be the officer or civilian who is responsible for supervising the work. The reviewing official should have knowledge of the contractor's performance and normally will be an officer or civilian at a higher organizational level than the evaluating official.

(4) Prior to forwarding an overall unsatisfactory performance report, the evaluating or reviewing official will advise a responsible official of the contractor's organization that an unsatisfactory report is being prepared and the facts on which it is based. Any written comments made by the contractor shall be included in the report and mistakes of fact alleged shall be resolved and made a part of the report.

(b) *Distribution of Performance Reports.* The original of the performance evaluation report for every contract will be retained by the activity preparing the report for a minimum of six years after date of the report. In addition, the reviewing official will forward a copy of the following reports:

(i) reports with an overall unsatisfactory evaluation,
(ii) reports which cite outstanding performance, and
(iii) reports for all contracts in excess of $200,000 to the:

Office of the Chief of Engineers,
Attn: DAEN-MCZ-K,
Forrestal Building
Washington, DC 20314

This office is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Departments.

(c) *Utilization of Performance Reports.* In the selection of fully qualified responsible contractors for future awards or negotiations of construction contracts above $1,000,000, the contracting officer shall obtain from the central data bank (listed in (b) above) the following:

(i) a record of the number of contracts and the total dollar amount for all satisfactory evaluations; and

(ii) complete transcripts of all performance evaluations showing unsatisfactory performance either on individual elements or overall evaluation, or remarks on outstanding performance. These transcript(s) or statement(s) may be obtained for smaller awards.

18-107 Specifications. The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, bids can be prepared on a fair and competitive basis. Materials, equipment, components, or systems shall be described, where possible, by reference to documents generally known to industry. The documents include Federal, military, or nationally-recognized industry, and technical society specifications and standards. The standards which best represent no more and no less than the Government's minimum needs shall be selected for incorporation by reference into the construction specifications.

18-108 Government Estimates.

18-108.1 *Construction Contracts.*

(a) Except for two-step formal advertising under Section II, Part 5, and negotiation under Section III without detailed plans and specifications, an independent Government estimate of construction cost in as great detail as if the Government were competing for the award shall be prepared from the plans and specifications for each proposed contract and modifications thereto, affecting price, anticipated to cost $25,000 or more. The contracting officer, at his discretion, may require the preparation of such an estimate where the anticipated cost is less than $25,000. Except as required below, access to or disclosure of information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(c) If the procurement is by formal advertising, except two-step formal advertising, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(d) If the procurement is by negotiation, cost breakdown figures in the Government estimate may be disclosed during negotiations but only to the extent deemed necessary for arriving at a fair and reasonable price and provided that the overall amount of the Government estimate, however, is not thereby disclosed prior to award. At the time of award the "For Official Use Only" designation shall be removed. After award, the Government estimate may be revealed, upon request, to those firms or individuals who submitted proposals.

18-108.2 *Architect-Engineer Contracts.* An independent Government estimate of the cost of architect-engineer services in the same detail as if the Government were submitting a proposal shall be prepared prior to the negotiation of each proposed contract or modification thereto, affecting price, expected to exceed $2,500 in amount. The cost breakdown figures in the Government estimate may not be disclosed prior to negotiations; but, these cost breakdown figures may be revealed during negotiations to the extent deemed necessary for arriving at a fair and reasonable price, and *provided*, however, that the overall amount of the Government estimate is not disclosed. Any change in the Government estimate that is made during or subsequent to price negotiation shall be specifically but succinctly explained in the record of price negotiation.

18-109 Disclosure of Magnitude of Construction Projects. Where the estimated value of the work is $25,000 or more, advance notices or invitations for bids and requests for proposals shall include a statement of the magnitude in terms of physical characteristics of the proposed construction and the estimated cost thereof stated in ranges between $25,000 and $100,000; between $100,000 and $250,000; between $250,000 and $500,000; between $500,000 and $1 million; between $1 million and $5 million; between $5 million and $10 million; and over $10 million. Where the estimated value of the work is less than $25,000, advance notices or invitations for bids and requests for proposals shall include a statement that the estimated cost of the proposed construction is under $25,000.

18-110 Statutory Cost Limitations.

(a) Contracts for construction shall not be awarded at a price in excess of statutory cost limitations unless the limitations for the particular contract can be and have been waived and shall not be awarded at a price, which, with allowances for Government imposed contingencies and overhead, exceeds the statutory authorization for the project.

(b) Invitations for bids and requests for proposals containing one or more items subject to statutory cost limitations shall state in a separate schedule the applicable cost limitation for each item subject to a specific statutory cost limitation. Invitations for bids and requests for proposals shall state specifically that a bid or proposal which does not contain prices for the individual schedules will be considered nonresponsive. Bids or proposals shall contain a certification that each such price includes an approximate apportionment of all estimated applicable costs, direct and indirect, as well as overhead and profit.

(c) A bid or proposal containing prices within statutory cost limitations only because such bid or proposal is materially unbalanced shall be rejected. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work, and prices which are overstated for other work. A bid or proposal containing prices that exceed applicable statutory cost limitations shall be rejected, unless for construction of cold storage or regular (general purpose) warehousing, barracks for enlisted personnel or bachelor officer's quarters, and the determination of the Assistant Secretary of Defense (Installations and Logistics) has been obtained that the limitations on construction costs in the annual

Military Construction Act shall not apply as impracticable. In addition, where appropriate provision is made in the invitation for bids or requests for proposals, separate award may be made on individual items whose price is within or not subject to any applicable cost limitation, and those items whose price is in excess of the limitations shall be rejected. Such a provision for separate award shall not be made unless determined to be in the best interest of the Government.

18–111 Expediting Construction Contracts. No expediting action, advancing the completion date and involving additional costs under a contract funded under the provisions of the annual Military Construction Appropriation Act or any similar legislations, shall be taken without the prior approval of the Assistant Secretary of Defense (Installations and Logistics).

18–112 Cost-Plus-Fixed Fee Contracts. Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee construction or architect-engineer contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (Installations and Logistics), setting forth the reasons therefor, is obtained.

18–113 Liquidated Damages. A liquidated damages clause shall be included in all contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where the contractor cannot control the pace of the work. Use of a liquidated damages clause is optional for contracts of $25,000 or less. Where such a provision is used, the clause set forth in 7–603.39 shall be included in the invitation for bids or request for proposals. Where different completion dates for separate parts or stages of the work are specified in the contract, this clause should be revised appropriately to provide for liquidated damages for delay of each separate part or stage of the work. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, such as the cost of substitute facilities, the rental of buildings, or the continued payment of quarters allowances, an amount for such items should also be included. Contracting officers shall take all reasonable steps to mitigate liquidated damages in accordance with 1–310(c) and may propose remissions of such damages in accordance with 1–310(d).

18–114 Concurrent Firm Fixed Price and Cost Type Construction Contracts. In view of potential labor and administrative problems, contracts including cost-plus-fixed-fee, price-incentive or other cost variation or cost adjustment provisions shall not be awarded where performance is to be accomplished on the same project site where work on a firm fixed price construction contract is being performed, unless prior approval is obtained from the Head of a Procuring Activity; nor should a contractor performing a fixed price contract be awarded any contract, to be performed concurrently at the same site, which contains cost variation or cost adjustment features other than the standard renegotiation clause or economic price adjustment provisions, price redetermination or price incentive features.

18–115 Construction Contracts With Design Architect-Engineers. No contract for construction of a project shall be awarded to the firm which designed the project or to its subsidiaries or affiliates, except with the approval of the Secretary of the Department concerned. (See Appendix G.) The Architect-Engineer shall be informed of this restriction prior to the commencement of negotiations for his service.

18-116 Contracts for Dismantling, Demolition or Removal of Improvements. See Section IV, Part 5.

18-117 Reserved.

18-118 Responsiility of Architect-Engineer.

18-118.1 *Construction Contract Change Orders.* Whenever a construction contract modification or change order is required by reason of any error or deficiency in designs, drawings, specifications or other services which were furnished by an Architect-Engineer under contract with the Government, contracting officers shall follow the procedures prescribed herein.

18-118.2 *Design Within Funding Limitation.* The clause set forth in 7-608.3 obligates the Architect-Engineer to design a project within a contractually specified dollar limit. In the event construction bids received on his design exceed the project limitation, the Architect-Engineer's sole responsibility is to redesign the project so as to come within the funding limitation. However, if the unfavorable bids or proposals are beyond his reasonable control (such as if there were an unanticipatable increase in material costs or undue delay by the Government in issuing a construction solicitation), the Architect-Engineer is not obligated to redesign at no cost to the Government. Whenever the Architect-Engineer is not required to redesign pursuant to 7-608.3, a written statement setting forth the reasons for such determination shall be placed in the Architect-Engineer contract file.

18-118.3 *Redesign Responsibility for Design Errors or Deficiencies.* Whenever the designs, drawings, specifications, or other services furnished by an Architect-Engineer contain any errors, deficiencies or other inadequacies, paragraph (a) of the clause in 7-607.2 obligates the Architect-Engineer to make the necessary correction at no cost to the Government. Whenever the Architect-Engineer is not required to redesign pursuant to paragraph (a) of the clause in 7-607.2, a written statement setting forth the reasons for such determination shall be placed in the Architect-Engineer contract file.

18-118.4 *Liability for Government Costs Resulting from Design Errors or Deficiencies.* Whenever a modification or change order to a construction contract is required by reason of an error or deficiency for which the Architect-Engineer might be liable to the Government for damages pursuant to paragraph (b) of the clause in 7-607.2, the contracting officer shall obtain required legal advice and shall consider the extent to which the Architect-Engineer may be reasonably liable. He shall enforce such liability where recoverable costs will exceed administrative costs and place a written determination thereon in the Architect-Engineer contract file stating the reasons for such determination to assess or not to assess additional costs against the Architect-Engineer.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 2—Formal Advertising

18–201 Types of Contracts. Generally, contracts for construction shall be formally advertised and be of the firm fixed-price type. Fixed price contracts for such work may be either (i) lump sum contracts for the total work or for defined parts of the work, or (ii) unit price contracts in which a unit price is paid for specified quantity units of work such as cubic yards of earth or concrete or square yards of pavement, or (iii) a combination of both. Lump sum contracting shall be used in preference to unit price contracting except where (i) large quantities of work such as grading, paving, outside utilities or site preparation are involved, (ii) quantities cannot be determined in advance of contracting within limitations that would permit a lump sum bid without a substantial contingency, (iii) quantities may change significantly during construction, or (iv) bidders would have to expend unusual effort in making take-off's of quantities. Fixed-price contracts with economic price adjustment provisions may be used where such clauses are customary in contracts for particular items if the omission of the clause would preclude a significant number of firms from bidding, or would likely result in the inclusion of unwarranted contingencies, unreasonably increasing the cost to the Government. The economic price adjustment clauses in 7–106 may be used, adapted to the particular procurement.

18–202 Preparation of Invitation for Bids.

(a) Forms used to invite bids are prescribed in Section XVI, Part 4 and are set forth in Appendix F. Invitations for bids shall contain the information required by 2–201(b).

(b) All invitations for bids shall allow sufficient bidding time (*i.e.*, the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard for the construction season, the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work and prepare estimates from plans and specifications.

18–203 Inspection of Site and of Data Affecting the Work. As appropriate, provisions should be made for bidders to inspect the construction site and have the opportunity to examine data available to the Government which may provide information affecting performance of the work, such as boring samples, original boring logs, records and plans of previous construction, etc. Such data should be assembled in one place and made available for inspection. The invitation for bids should notify bidders of the time and place for the site or data inspection and where such inspection by the bidders alone is not feasible, designate an individual, preferably the same one for all bidders, who will show the site or data to the bidders. Care shall be taken that all significant information regarding the site and the data is made available to all bidders in the same manner, including information regarding utilities, if any, to be furnished during construction. A record should be kept of the identity and affiliation of all bidder's representatives who inspect the site or examine the data.

18–204 Prebid Conferences. When the contracting officer considers that a prebid conference should be held in connection with a large construction project involving important or complex work, the invitation for bids shall provide for such conference to be held on a specified date, about midway during the bidding period. At the conference, the contracting officer or his representative shall explain the nature of the work and problems that can be expected. He shall answer questions which he may require to be submitted in advance. He shall, however, defer answer on questions which he considers require further study. The design architect-engineer should be available during the conference to assist in interpreting plans and specifications. Remarks and explanations at the conference shall not qualify the terms of the invitation and specifications. A complete record shall be made of the conference.

18-205 Preinvitation Notices.

(a) Unless the requirement is waived by the Head of a Procuring Activity or his designee, preinvitation notices shall be sent to all prospective bidders on any construction procurement to be formally advertised, estimated to cost $100,000 or more. These notices shall be sufficiently in advance of the invitation for bids to stimulate interest on the part of the greatest number of contractors. Such notices may also be used where the procurement is estimated to cost less than $100,000. Preinvitation notices shall:

(i) describe the proposed work in sufficient detail to disclose the nature and volume of work;
(ii) state the location of the work;
(iii) include tentative dates of issuance of invitations, opening of bids and estimated time of completion;
(iv) state where plans will be available for inspection without charge;
(v) include a statement of the magnitude in terms of physical characteristics and estimated cost of the proposed construction in accordance with 18-109;
(vi) specify a date by which request for an invitation for bids should be submitted; and
(vii) expressly notify contractors that, if no bid is to be submitted, they should advise issuing office whether future advance notices are desired.

(b) Invitations for bids shall be sent to those bidders who have requested them pursuant to a preinvitation notice and may be sent to other bidders on specific request.

(c) In addition to compliance with 2-203.1, on request, pre-invitation notices and invitations for bids (with plans and specifications) for unclassified construction work will be furnished without charge to organizations which maintain plan display rooms for the benefit of contractors, subcontractors and material suppliers, without charge to the public. Requests from organizations in the United States may be honored on an annual or semiannual basis for all or for a stated class of construction projects. The geographical extent of this distribution shall be as determined on a case by case basis by the contracting officer.

18-206 Amendment of Invitation for Bids. See 2-208, 16-401.1 (ix) and 18-704.2. When an amendment will require additional time for bidders to prepare bids, the time for bidding shall be appropriately extended, except in emergencies, and consideration shall be given to notifying bidders by telephone or telegraph of the forthcoming amendment to minimize disruption of their bid preparations. Where such an amendment is issued within a period of ten days prior to the date set for bid opening, a minimum of ten days lead time, except in emergencies, shall be allowed prospective bidders to prepare new or revised bids. The nature of any emergency preventing a ten day lead time will be documented.

18-207 Opening of Bids. See 2-402 and 18-108.1(c).

18-208 Cancellation of Invitations for Bids.

(a) Before opening, see 2-209.

(b) After opening, see 2-404.1 and 18-704.2.

18-209 Prequalification of Bidders.

(a) The prequalification of bidders procedure is used when it is necessary to assure timely and efficient performance of critical construction projects by limiting bidding to concerns of proven competence to perform in the required manner. The result of a prequalification is a list of bidders who are determined to be qualified to bid on a specific construction project.

(b) The Head of a Procuring Activity may authorize the prequalification of bidders when he determines in writing that a construction project is of such urgency or complexity as to require prequalification.

(c) Procedures to be used shall be approved by the Head of a Procuring Activity. They shall provide, in connection with small business concerns that:

(i) if the qualifying authority is of the opinion that a small business concern is not qualified for reasons relating to responsibility, the recommendation of the appropriate Small Business Regional Office shall be requested;
(ii) if that office expresses the opinion that the concern appears to have the requisite responsibility, it shall be permitted to submit a bid; and
(iii) if a small business concern submits the lowest responsive bid and is found to be non-responsible, the procedures prescribed by 1-705.4 shall be followed.

18-210 Award. No award shall be made at a price which, with allowances for Government imposed contingencies and overhead, exceeds the statutory authorization for the project unless the limitations for a particular contract can be and have been waived (see 18-110(c)). The effect of changes in wage rate determinations on award is discussed in 18-704.2.

18-211 Notice of Award. Award shall be made to the successful bidder as provided in 2-407.1. If a notice of award is issued, it shall:

(i) identify the invitation;
(ii) identify the contractor's bid;
(iii) set forth the award price;
(iv) specify date of commencement of work, or advise contractor that a notice to proceed will be issued;
(v) advise contractor that a formal contract must be executed before commencement of work; and
(vi) inform contractor that performance and payment bonds must be furnished.

Part 3—Negotiations

18-301 Limitation on Authority to Negotiate Contracts. Contracts for construction (see 18-101.1) shall be formally advertised whenever such method is feasible and practicable (see 18-102) under existing conditions and circumstances (but see 1-705.5(c)(2)(H)(ii) and 1-706.2), even though negotiation may be authorized as indicated hereafter.

18-301.1 *Work in the United States.* Contracts for construction mentioned above, to be performed in the United States, its possessions and Puerto Rico shall not be negotiated unless authorized pursuant to the following subsections of 10 U.S.C. 2304 (a): (1), (2), (3), (10), (11), (12), (15), or for contracts with Small Business Administration, (17). The appropriate code provision will be cited in the contract as authority for the negotiation. (See respectively, 3-201, 3-202, 3-203, 3-210, 3-211, 3-212, and 3-215.) Contracts to be performed in the possessions of the United States and Puerto Rico may not be negotiated pursuant to 10 U.S.C. 2304 (a) (6), (3-206).

18-301.2 *Work Outside the United States.* Contracts for construction to be performed outside the United States, its possessions or Puerto Rico shall be negotiated unless formal advertising is authorized in accordance with 18-102. The appropriate subsection of the code will be cited in all contracts as authority for negotiation.

18-302 Small Purchases. Procurements of construction of $10,000 or less may be negotiated in accordance with Section III, Part 6, and 16-402.2. Standard Form 19 or DD Form 1155, as appropriate, may be used for purchases of $10,000 or less.

18-303 Profit or Fee.

18-303.1 *Fixed-Price Construction and Architect-Engineer Contracts.* The guidance set forth in 3-808, while not required, may be used in considering profit as an element of price under fixed-price construction and architect-engineer contracts.

18-303.2 *Cost-Reimbursement Type Construction Contracts.*

(a) The fees of prime contractors under cost-plus-fixed-fee construction contracts shall be negotiated in accordance with Departmental procedures which have been approved by the Assistant Secretary of Defense (Installations and Logistics).

(b) The target fee of prime contractors in incentive fee contracts shall be established using the criteria and fee schedules provided for under Departmental procedures as a guide in conjunction with the reasonableness of the target cost, the maximum and minimum fees to be established and the fee adjustment formula.

(c) Limitations on fees in both of the above type contracts are set forth in 3-405.6(c)(2).

18-303.3 *Cost-Reimbursement Type Architect-Engineer Contracts.* (See Part 4 of this Section.) The fees under cost-reimbursement type architect-engineer contracts shall be established in accordance with applicable criteria provided in Departmental procedures.

18-304 Subcontracting Programs. See Section XXIII.

18-305 Preparation for Negotiation.

18-305.1 *Fixed-Price Type Contracts.*

(a) On all fixed-price type construction procurement of $25,000 or more except for two-step formal advertising under Section II, Part 5, and negotiation under Section III without detailed plans and specifications, and for all modifications to construction contracts involving $25,000 or more, whether by increase or decrease in price or a combination of both, a Government estimate shall be prepared. (See 18-108.1.) For all fixed-price architect-engineer contracts in excess of $2,500 and for all modifications to architect-engineer contracts involving more than $2,500 whether by increase or decrease in price or a combination of both, a Government estimate shall be prepared. (See 18-108.2.)

(b) After preparation of the Government estimate in the appropriate manner indicated above, the proposals and cost or pricing data submitted by potential contractors shall be evaluated, analyzed and compared with the Government estimate. (See 3-807.2.)

(i) When there are significant differences between the Government estimate in a construction procurement and the proposals submitted on any item, the contractors will be requested to submit cost or pricing data concerning such elements as wage rates or fringe benefits, significant materials and equipment allowances. Such data shall also be evaluated and analyzed, as shall cost or pricing data on subcontracts (3-807.9), when requested by the contracting officer.
(See 23-100.)

(ii) When a proposal for an architect-engineer contract is less than the Government estimate, the contracting officer shall insure that there is a complete understanding of the scope of the work. When the proposed price is considered unreasonable, additional data may be requested from the architect-engineer. If he refuses to furnish such data, negotiations with him will be terminated and a proposal requested from the architect-engineer selected next in preference.

(c) When appropriate in the procurement of construction, additional pricing tools may be used, such as a comparison of current prices for similar features of work, adjusted for differences in site and specifications. In addition, rough yardsticks such as cost per cubic foot for structures, cost per linear foot for utilities, cost per cubic yard for excavation, concrete, etc., may be developed and compared with proposed prices which are questioned.

18-305.2 *Cost-Reimbursement Type Contracts.* This type of contract may be used either in construction or in the architect-engineer field, only when its use is consistent with 3-405 and 18-112. In either case, a Government estimate will be prepared.

18-306 Negotiations.

18-306.1 *Fixed Price Construction Contracts.* Except where an award is made on initial proposals without negotiations (see 3-805), negotiations will be conducted with all offerors within a competitive price range of the Government estimate. Where negotiations disclose errors of fact or judgment in the Government estimate, the Government estimate will be revised to correct such error and the contract record adequately documented.

18-306.2 *Fixed-Price Architect-Engineer Contracts.*

(a) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, if any, has been obtained. Where the negotiations result in a price in excess of the initial Government estimate or as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(b) In no event shall a firm fixed-price type contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6%) of the estimated construction costs of the project to which the architect-engineer services apply. If, however, the contract also covers any type services other than the preparation of designs, plans, drawings and specifications, that part of the contract price for such other services shall not be subject to the six percent (6%) limitation.

18-306.3 *Cost-Reimbursement Contracts.* Negotiation of the fee of such construction contracts and architect-engineer contracts shall be in accordance with 18-303.2 and 18-303.3, respectively. Statutory limitations on fees charged on construction contracts are set forth in 3-405.6. In negotiating an architect-engineer contract, the contract price, which includes the fee plus the estimated total reimbursable costs to be paid to the architect-engineer shall not exceed six percent (6%) of the estimated cost of the construction project to which such services apply. If, however, the contract also covers any type services other than the preparation of designs, plans, drawings and specifications, that part of the contract price for such other services shall not be subject to the six percent (6%) limitation.

18-307 Additional Work Under Fixed-Price Architect-Engineer Contracts.

(a) The principles set forth in 18-305.1(b) and 18-306.2 are applicable to modifications of fixed-price architect-engineer contracts for additional work outside the scope of the contract.

(b) If the work to be performed under the modification is within the general scope of the contract, the contracting officer shall, under the provisions of the "Changes" clause (see 7-607.3) by written order, with or without prior negotiation, direct that the changes be made, and where such action causes an increase or decrease in the contractor's cost or time required for performance of the contract, an equitable adjustment shall be made. Where there is a failure to agree as to the equitable adjustment, the provisions of the "Disputes" clause will be followed.

(c) Where the modification involves work not initially included in the contract, the limitation on the total contract price set forth in 18-306.2(b) is applicable, as applied to the revised total estimated construction costs. Where redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6%) statutory limitation is not exceeded:

- (i) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;
- (ii) The contract cost for the original design will be added to the contract cost for redesign;
- (iii) The total contract design cost obtained by (ii) above will be divided by the total construction cost obtained by (i) above. The resulting percentage may not exceed the six percent (6%) statutory limitation.

18-308 Audit as a Pricing Aid. See 3-809.

18-309 Record of Price Negotiations. See 3-811.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 4—Architect-Engineer Selection Procedures

18-401 Scope of Part. This Part contains the general principles and procedures for the selection of architect-engineer firms for contracts for professional services, except for such services performed in connection with Army Civil Works projects. Discussion of specific areas affecting such services will be found under the paragraphs of this Section dealing with those areas.

18-402 Selection.

18-402.1 *Selection Policy.* As provided by Section 902 of Public Law 92-582, approved October 27, 1972, it is the policy of the Federal Government to publicly announce all requirements for architect-engineer services, and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. The selection of architect-engineer firms for professional services contracts shall be accomplished in accordance with the procedures set forth in this part. Such selection shall not be based upon competitive bidding procedures, but rather upon the professional qualifications necessary for the satisfactory performance of the services required, subject to the following additional considerations:

(i) specialized experience of the firm in the type of work required;

(ii) capacity of the firm to accomplish the work in the required time;

(iii) past experience, if any, of the firm with respect to performance on Department of Defense contracts;

(iv) location of the firm in the general geographical area of the project, provided that there is an appropriate number of qualified firms therein for consideration; and

(v) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of Department of Defense architect-engineer contracts among qualified architect-engineer firms including small and small disadvantaged business firms and firms that have not had prior Department of Defense contracts.

18-402.2 *Selection Procedures.* The procedures listed below shall be used in the selection of architect-engineer firms for all architect-engineer contracts to be awarded in the United States and, to the extent practicable, in the rest of the world.

(a) All selection actions, including preselection, shall be under the cognizance of the construction activity responsible for the work.

(b) For contracts estimated to cost more than $2,500, criteria which will be used to evaluate the qualifications of the architect-engineer firms to be considered should be established in advance. In addition to the general considerations listed in 18-402.1, the criteria should be specific as to desired qualifications, size and expertise of staff, required past experience, and, as appropriate, esthetic considerations, special conceptual or design elements, and related factors. The information contained in the DD Form 1391 for the construction project, if applicable, should be used in preparing the criteria.

(c) Prior to any preselection or selection action, the cognizant construction activity shall assure that public announcement has been made in accordance with 1-1003.4(b)(2). The criteria established in accordance with (b) above shall be set forth in such announcement, in accordance with 1-1003.9(h).

(d) A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in 18–403 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee.

(e) Both preselection and selection boards shall consist primarily of senior staff architects or engineers, or military personnel having comprehensive experience in military construction.

(f) Preparation of preselection lists for contracts estimated to cost more than $10,000, and selections for contracts estimated to cost more than $2,500, shall be accomplished by formally constituted boards consisting of at least three members.

(g) The selection board shall review the qualifications and performance data (see 18–403) of each of the firms on the preselection list, in accordance with the policy established in 18–402.1 and the criteria developed pursuant to (b) above, and shall recommend, in order of preference, a minimum of three firms for approval for contract negotiations to the head of the construction activity, or his designee. The selection board may submit four or more firms to allow for possible findings by the construction activity or higher authority (as required by 18–402.3(iv) or (v)), that certain firms on the list are unqualified. (See 18–402.3(b) which requires that a minimum of three firms must remain upon final approval of the selection list.) If for any reason the selection board cannot formulate a slate of at least three firms from the preselection list, the selection board shall advise the preselection board of its inability to formulate a slate, and they shall request additional names for consideration. The selection board shall state the number of additional names needed and may provide guidance stating the reasons that the firms are considered unqualified. The preselection board shall furnish at least three names for each vacancy on the final slate.

(h) In the case of any contract estimated to cost more than $10,000, the selection board shall have conducted oral or written discussions with, as a minimum, all of the firms recommended to the head of the construction activity or his designee. Discussions shall be directed to the specific project or types of projects under consideration and shall include but not necessarily be limited to each firm's technical qualifications, experience, organization, capacity, current workload, immediate availability, key individuals who will be placed on the work, anticipated concepts, relative utility of alternative methods of design approach, and other relevant factors, except fee. Discussions may be conducted by telephone when considered appropriate. The requirement for discussions may be waived in individual cases by the head of the next higher organizational level of the construction activity, or his designee at that level, but only when it is considered to be clearly in the best interests of the Government to do so.

(i) The head of the construction activity, or his designee, shall not add firms to any selection list prepared in accordance with (g) above. Upon approval of the selections by the head of the construction activity, or his designee, and such approval as may be required by 18–402.3, negotiations shall be initiated in accordance with 18–306.2.

(j) All preselection and selection actions shall be fully documented.

18-402.3 *Special Approval of Selections.*

(a) Special approval shall be required for certain selections as indicated below. Dollar amounts cited shall include, where applicable, fees for (I) planning and design, (II) supervision and inspection of construction, and (III) any other architect-engineer services related to construction.

(i) When the estimated cost of a contract to be awarded by a field activity exceeds $200,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(ii) When a firm, to which a field contracting office has previously awarded contracts totaling over $200,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval of the next higher organization level of the construction activity;

(iii) When a selection is made by the Army Office of the Chief of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or less, the selection shall require the approval of the Chief of Engineers, the Commander, Naval Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their designees;

(iv) When the estimated cost of a contract exceeds $500,000, the selection shall require the approval of the Secretary of the Department concerned, or his designee;

(v) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract); and

(vi) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level.

(b) Approval authorities cited in (a) above shall not add firms to any selection list prepared in accordance with 18-402.2(d). If the firms on a submitted selection list are deemed to be unqualified or the list is considered inadequate for other reasons, the approving authority shall record the reasons and return the list through channels to the preselection board for the preparation of a revised list. However, the finding that certain firms on the selection list are unqualified shall not preclude approval of the list provided that a minimum of three firms remain. In such cases the reasons for finding a firm or firms unqualified shall be recorded and lists may be approved with respect to the three or more qualified firms remaining.

18-403 Architect-Engineer Qualifications and Performance Data.

18-403.1 *General.* Selection of architect-engineer firms shall be based on the effective utilization of qualifications and performance data as described below.

18-403.2 *Architect-Engineer Regions and Areas.* For the purposes of receiving and distributing architect-engineer qualification and performance data, the United States is divided into regions, and the rest of the world into general geographic areas. These regions and areas are described and delineated in a booklet entitled "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," which is published by the Office of the Assistant Secre-

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tary of Defense (Installations and Logistics) and is available from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402, or from DoD construction activities.

18–403.3 *Qualifications Data.*

(a) *Filing.* Firms desiring to be considered for architect-engineer contracts in a given region or area must file Standard Form 254, "Architect-Engineer and Related Services Questionnaire," and when applicable, Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, (See 16–405.3(a)) with DoD construction activities listed in the booklet for that region or area. Firms are encouraged to submit annually an updated statement of qualifications and performance data on Standard Form 254. Architect-engineer firms shall normally be selected from the region or area in which the project is to be accomplished; however, if sufficient qualified firms are not available in a region or area for consideration for a particular contract, firms from other regions or areas shall be considered. Firms desiring to be considered for architect-engineer contracts in connection with ballistics and space systems should file qualification data with the offices administering this type of construction, as listed in the booklet.

(b) *Distribution, Classification, and Utilization.* Each office listed for a region or area shall maintain an architect-engineer qualifications data file for that region or area. Offices responsible for the construction of ballistics and space systems facilities, as listed in the booklet, shall maintain similar qualifications data files. Receiving offices shall review all Standard Forms 254 and 255, when applicable, filed by architect-engineers, including such forms received pursuant to announcements required by 1–1003.4(b)(2) and shall classify each firm with respect to:

(i) location;
(ii) specialized experience;
(iii) professional capabilities; and
(iv) capacity with respect to scope of work that can be undertaken.

All offices which have a responsibility for selecting architect-engineer firms shall utilize these complete data files in the required selection procedures, either through maintaining files of their own or by arranging for convenient access to the files of another office.

(c) All regional and area offices that maintain qualifications data files shall review and update the file of each architect-engineer firm at least once a year. The updating process should include:

(i) reviewing Standard Forms 254 and 255, when applicable, to assure that the firm is properly classified in accordance with (b) above;
(ii) recording any awards made to the firm in the past year (unless the office uses another method to assure that such award information is available and used during preselection and selection actions);
(iii) posting date of review; and
(iv) discarding any material that has not been updated within the past three years, if considered no longer pertinent.

18–403.4 *Performance Data.* For each contract over $10,000 awarded, a performance evaluation report shall be prepared by the cognizant construction activity, utilizing DD Form 1413, "Performance Evaluation — Architect-Engineer

Professional Services Contractor." Such reports may also be prepared for contracts of lesser amounts. For contracts of over $10,000, the construction activity shall distribute the DD Form 1413 to all other offices within the region or geographical area as listed in the booklet "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense" and to the Washington, D. C. headquarters of their respective construction activities. DD Form 1413 shall be filed and utilized in a manner similar to qualifications data (Standard Form 254).

This requirement is exempt from report control symbol pursuant to Section III.D.2, DoD Directive 5000.19.

18–404 Contractual Reports.

18–404.1 *Field Offices.* Field offices of the construction activities within each region (see 18–403.2) of the United States, less Alaska and Hawaii, shall furnish a quarterly report to each other and to their respective Washington headquarters of all architect-engineer contracts over $25,000 (except contracts involving classified projects) awarded during the quarter. Field offices of the construction activities within the geographical areas (see 18–403.2) of the rest of the world shall furnish such a quarterly report to their respective Washington headquarters only. Field offices responsible for the construction of ballistics and space systems facilities shall furnish similar reports to each other and to their respective Washington headquarters. The above reports shall be due within 15 days after the end of the quarter concerned and shall be cumulative within the calendar year.

18–404.2 *Washington Headquarters.*

(a) *Quarterly Reports.* Each Washington headquarters of the construction activities shall furnish to the Assistant Secretary of Defense (Installations and Logistics), utilizing the format shown below, quarterly reports, cumulative within each calendar year, of all architect-engineer contracts over $100,000 (except contracts involving classified projects) awarded world-wide by all offices of the activity. Report Control Symbol DD-I&L(Q) 559 has been assigned to this reporting requirement. This report shall be due within 30 days after the end of the quarter concerned.

DEPARTMENT OF THE ....
QUARTERLY REPORT OF ARCHITECT-ENGINEER
CONTRACT AWARDS OVER $100,000

__ QUARTER CY 19__ (CUMULATIVE FOR CY) **REPORT CONTROL SYMBOL DD–I&L(Q)559**

Name and Location of Architect-Engineer Firm	Responsible Office	Region or Area	Location & Brief Description of Project	Contract or Modification Number	Date of Award	Amount of Award	Cumulative Amount of Awards for Calendar Year

(b) *Instructions for Preparation of Reports.* Show each contract over $100,000 awarded during the current calendar year, and each supplemental award thereto. When supplemental awards to a contract of $100,000 or less awarded during the current calendar year cause the total of that contract to exceed $100,000, the contract and supplemental awards will be shown. Supplemental awards made during the current calendar year to contracts awarded in a previous calendar year will be shown if the total of these supplemental awards exceeds $100,000. Contracts awarded each firm, along with supplemental awards, will be grouped together regardless of the region or area in which awarded, and the total of the awards for each firm shown in the cumulative column. Firms will be listed alphabetically by surnames. Second, third, and fourth quarter reports will be cumulative in that contract awards and supplemental awards reported for previous quarters will be shown in addition to awards required to be reported for the current quarter. Supplemental awards will be grouped with the contracts to which they pertain, and the total amount of all awards for each firm for the calendar year to date will be shown in the cumulative column. Contracts undertaken for other than Department of Defense agencies, such as NASA, MAP, and AID, should be identified as such by an appropriate notation adjacent to the contract number.

18-405 Release of Information on Architect-Engineer Selections. After the required approvals for the selection have been obtained, information may be released by the contracting officer identifying only the architect-engineer firm selected, and describing the work in general terms, unless precluded by security considerations. If negotiations are terminated without consummating a contract, the contracting officer may release such information and state that negotiations will be undertaken with another (named) architect-engineer. When an award has been made, the contracting officer may release this information, but the estimated construction cost of the facilities involved shall not be divulged.

Part 5—Foreign Purchases and Construction in Foreign Countries

18-501 Construction in Foreign Countries.

18-501.1 *General.* Construction in foreign countries includes construction anywhere outside the United States. In contracts which are entered into with foreign contractors or are for performance in foreign countries, the term "United States" will appear before the word "Government."

18-501.2 *Technical Agreements.* When construction is contemplated in a foreign country, the Office of the Chief of Engineers, Department of the Army, or the Naval Engineering Facilities Command, Department of the Navy, as appropriate, should be invited to participate in the negotiations of any technical working agreement with a foreign government concerning the construction. This agreement negotiated between appropriate officials of the United States and the foreign government should, to the extent feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction required by the laws, regulations and customs of the United States and the foreign government, relating to:

(i) the acquisition of all necessary rights;
(ii) the expeditious, duty free importation of labor, material and equipment;
(iii) the payment of taxes applicable to contractors, personnel, materials and equipment;
(iv) the applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of the host country and citizens of other countries;
(v) the provision of utility services;
(vi) the disposition of surplus materials and equipment;
(vii) the handling of claims and litigation; and
(viii) any other problems which can be foreseen and appropriately resolved by such agreement.

18-502 Labor.

18-502.1 *The Defense Base Act.* The Defense Base Act extends the applicability of the Longshoremen's and Harbor Worker's Compensation Act to certain classes of employees engaged in work outside the United States (see 10-403(a)). Where indigenous employees are subject to the compensation laws or comparable provisions of the host country for job-connected illness or injury, the contracting officer shall consider requesting a waiver of the Defense Base Act (see 10-403(b)).

18-502.2 *Labor Laws of Host Country.* Contractors shall comply with the applicable labor laws of the host country. Exemption from such laws shall be sought by means of treaty, executive agreement or express authorization from proper officials, where compliance with the laws is impractical or serves no useful purpose.

18-503 Materials. Purchase of materials, equipment and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, or to avoid taxation, or to obtain other advantages, purchase may be by the United States. Contracting officers shall consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, shall take advantage of tax exemptions available under existing agreements. See 11–403. In specifying materials, supplies, and equipment for construction in foreign countries, contracting officers shall make maximum use of foreign currencies available for the project, shall encourage the use of American materials, equipment, and supplies and shall obtain the maximum feasible competition from indigenous, other foreign and American suppliers.

18–504 Cargo Preference Act. See Section I, Part 14.

18–505 Scope of Part. The following paragraphs of this Part implement the Buy American Act (41 U.S.C. 10 a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to construction contracts.

18–506 Definitions. As used in this Part, the following terms have the meanings set forth below.

18–506.1 *Construction* means construction, alteration, or repair of any public building or public work in the United States.

18–506.2 *Construction Materials* means articles, materials, and supplies, which are brought to the construction site for incorporation in the building or work.

18–506.3 *Components* means those articles, materials, and supplies, which are directly incorporated in construction materials.

18–506.4 *Domestic Construction Material* means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the construction material and, in the case of components of foreign origin, duty (whether or not a duty free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact), if the construction material in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Department concerned to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

18–506.5 *Nondomestic Construction Material* means a construction material other than a domestic construction material.

18–506.6 *United States* means the States, the District of Columbia, Puerto Rico, and possessions (see 1–201.12). It does not include leased bases or trust territories.

18–507 Statutory Requirements. Except as provided in 18–508, the Buy American Act requires that in the performance of contracts for construction, only domestic construction materials shall be used. In determining whether a construction material is a domestic construction material, only the construction material and its components shall be considered.

18-508 Exceptions.

18-508.1 ***Nonavailability in the United States.***

(a) The Buy American Act does not apply to articles, materials, and supplies of a class or kind determined to be not mined, produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Certain construction materials determined to be exempt under this exception are set forth in 6-105.

(b) Purchase of nondomestic construction material on the basis of "nonavailability," when the material is not listed in 6-105, shall be made only if the purchase of such material is approved by:

(i) the Secretary of the Department concerned, if the cost of such materials is estimated to exceed $100,000;

(ii) the Head of the Procuring Activity or his immediate deputy, if the cost of such materials is estimated not to exceed $100,000;

(iii) the principal staff officer responsible for procurement within the procuring activity (or, in the Air Force, within the major air command) concerned, if the cost of such materials is estimated not to exceed $10,000; or

(iv) an official at a level above the contracting officer, if the cost of such materials is estimated not to exceed $2,500.

Before granting such approval or making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

18-508.2 *Unreasonable Costs or Impracticability.* The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the use of a particular domestic construction material would:

(i) unreasonably increase the cost, or

(ii) be impracticable.

When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

18-508.3 *Panamanian Materials for Use in the Canal Zone.* In accordance with the Memorandum of Understandings ancillary to the Treaty with the Republic of Panama signed 25 January 1955, articles, materials, and supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone are excepted from the Buy American Act.

18-509 Reserved.

18-510 Penalty for Violation. If the Secretary concerned finds that in the performance of a construction contract there has been a failure to comply with the clause required by 7-602.20, he shall make public his findings, including therein the name of the contractor obligated under the contract, and no other contract for construction in the United States or elsewhere shall be awarded to such contractor, or to subcontractors, materialmen, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public. (See Section I, Part 6.)

18-511 List of Excepted Articles, Materials, and Supplies. See 6-105.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 6—Termination of Contracts

18-600 Scope. This Part sets forth policies and instructions and prescribes contract clauses for use in construction and architect-engineer contracts relating to termination of such contracts through default or for the convenience of the Government.

18-601 Definitions. See 8-101. As used in this Part, the following terms have the meanings set forth below.

(a) *Construction equipment* means automotive vehicles, earth movers cranes, batching plants, crushers, pavers, mixers, generators, compressors, pumps, drills, welders, forms and other items of equipment (other than hand tools) used or capable of being used in construction work.

(b) *Terminated portion of a construction contract* which has been completely terminated means the entire contract notwithstanding the completion of and payment for individual items of work prior to termination. (See 18-604.)

18-602 Final Payment. See 8-213.2. Prior to presenting the final payment voucher to the disbursing officer, after termination action, the contracting officer shall ascertain whether there are any outstanding labor violations. If so, the contracting officer shall determine, pursuant to the criteria set forth in 18-704.13, the amount to be withheld from the final payment voucher by reason of such violations.

18-603 Allowance for Profit. See 8-303. In a construction contract, for the purpose of computing profit, that portion of settlements by the prime contractor with construction subcontractors for actual work in place at the job site as distinguished from materials on hand and preparations made to complete the work, shall be considered compensation for services delivered to the prime contractor prior to the effective date of termination.

18-604 Completed End Items. Work in place accepted by the Government under a construction contract is not to be considered a completed end item even though that work may have been paid for at unit prices set forth in the contract. In case of the complete termination of such contracts, the settlement proposal shall be submitted on the total cost basis and any progress or other payments shall be used to reduce the gross amount of the settlement.

18-605 Submission of Settlement Proposals. The settlement proposal forms prescribed in 8-802 and 8-803 shall be adopted and modified as construction contractors or architect-engineers consider necessary.

18-606 Bases for Settlement Proposals. See 8-307.2.

(a) *Inventory Basis*. The inventory basis of settlement is appropriate for use under the following circumstances:

- (i) the partial termination of a construction or architect-engineer contract;
- (ii) the partial or complete termination of supply orders under any terminated construction contract;
- (iii) the complete termination of a unit-price (as distinquished from a lump sum) architect-engineer contract.

(b) *Total Cost Basis*. The total cost basis of settlement shall be used in all cases where a construction contract or a lump sum architect-engineer contract is completely terminated. Line 10, Section II of DD Form 541 (8–802.2) "Deduct-Finished Product Invoiced or to be Invoiced" is not to be used. All progress and other payments shall be used to reduce the gross amount of the settlement.

18–607 Adjustment of Fee.

(a) The "Termination" clause in 7–605.26 provides that the contracting officer and the contractor may agree upon, *i.e.*, negotiate, the adjustment in fee necessitated by a partial or complete termination of the contract. Where the parties are unable to agree, the fee is to be adjusted as prescribed in paragraph (e) of such clauses.

(b) When the contract has been terminated for the convenience of the Government, the percentage of completion basis, generally, constitutes a fair and equitable method of adjusting the fee. The percentage of completion basis refers to the contractor's total effort and not solely to the actual construction work. Generally, the effort of a contractor under a cost-reimbursement type construction contract can be segregated into factors such as: mobilization including organization, use of finances, procurement and receipt of materials, placement of subcontracts, preparation of shop drawings, work in place performed by own forces, supervision of subcontractors' work, job administration and demobilization. In the case of architect-engineer contracts, the factors shall include such of the above as are appropriate. Each of the applicable factors will then be weighted, predicated upon a proper evaluation and sound judgment of the importance and difficulty of each factor under the circumstances of each individual contract. One method of weighting the applicable factors is to assign weighted values totaling 100. Next, the percentage of completion of each factor must be established based upon the specific facts of each contract. The application of the percentage of completion of each factor to the weighted value of each factor results, when totaled, in the overall percentage of contract completion. Such percentage of completion is then applied to the total contract fee or to the fee applicable to the terminated portion of the contract to arrive at the adjustment necessitated by the termination. When agreement cannot be reached, the contracting officer shall determine the percentage of completion as above indicated. When considered necessary, the contracting officer may consider and allow in the fee adjustment an amount to fairly compensate the contractor for work done, if any, in settling claims of subcontractors and disposing of termination inventory.

18–608 Contractor Inventory. This Part and Section XXIV cover the disposition of all contractor inventory (8–101.5) generated under construction and architect-engineer contracts related to construction. It applies to termination inventory and to any other inventory which is:

(i) excess because of a contract modification; or

(ii) excess under a price revision type contract;

and the cost thereof is included in the contractor's claim for an equitable adjustment or revision in price. It also applies to all property which is excess to the requirements of a cost-reimbursement type contract and includes excess Government-furnished property under any type contract.

18–609 Separate Schedules. See 24–203.2. Contractor equipment shall be submitted on separate inventory schedules. In addition to the requirements contained in 24–203.2, construction equipment shall be submitted on separate schedules.

18–610 Return of Materials to Stock. Materials taken from stock and shipped to the construction site shall be considered common items (24–101.2 and 24–203.5) and shall be returned to stock unless the contractor establishes that such items cannot be utilized without loss. Contractors shall not include in their settlement proposals the cost of any materials so returned. Any costs in connection with the withdrawal, replacement or transportation of such materials may be included as "Other Costs." (Schedule B, Item 5 of DD Form 541 (8–802.2)).

18–611 Allocability of Contractor-Acquired Property on Inventory Schedules. It is the responsibility of the contracting officer to determine that all property listed on inventory schedules is qualitatively and quantitatively allocable to the terminated contract or the terminated portion thereof, taking into consideration any work in place. Also, where applicable, the contracting officer must determine that the difference between the cost of allocable property on the inventory schedules and the total cost of property included in the settlement has been incorporated in the work or consumed in the performance thereof.

18–612 Contractor's Certificate—Property Incorporated in Work. Each contractor whose settlement proposal includes the cost of property (materials, etc.) incorporated into the work shall execute a certificate to the effect that all property not accounted for on the inventory schedules has been incorporated into the work or consumed in the performance thereof.

18–613 Inventory at Construction Site. Every effort will be made by the contracting officer to relieve the contractor, as promptly as possible, of the responsibility for the preservation and protection of termination inventory located at the construction site. Property, including construction equipment, which is not to be included on inventory schedules shall be removed by the contractor as promptly as possible.

18–614 Clean-Up of Site. The contracting officer shall direct such action as will insure the clean-up of the site, protection of serviceable materials, removal of hazards and such other action as will leave a safe and healthful site.

18–615 Scope of Screening. Inventories of construction materials and equipment shall be screened in accordance with 24–205, in the Army, by the Chief of Engineers; in the Navy, by the Naval Facilities Engineering Command; and in the Air Force, by the Director, Civil Engineering.

18–616 Contracts for Other Departments or Agencies. Where a contract quotes funds of a department or agency other than the department administering the contract, such department or agency shall have first priority to all property listed on inventory schedules in accordance with any regulations issued by that department or agency.

18–617 Transfer of Property. All transfers of property on inventory schedules to Department of Defense activities or to other Government agencies shall be on a non-reimbursable basis where the contract quotes funds from a Department of Defense activity. Handling, packing and transportation costs shall be borne by the receiving activity or agency. Where the contract cites funds other than the Department of Defense, any transfers shall be with or without reimbursement as such agency directs.

18-618 Termination of Fixed-Price Construction Contracts for Default.

18-618.1 *Termination of the Contractor's Right to Proceed.* Under contracts containing the "Termination for Default-Damages for Delay-Time Extensions" clause in 7-602.5, the Government has the right, to the extent provided in such clause, to terminate the contractor's right to proceed with the work, or any separable part thereof, if the contractor does not prosecute the work required by the contract with such diligence as will insure its completion, or fails to complete it, within the time specified in the contract or any extension thereof.

18-618.2 *Effect of Termination for Default.* If a contractor's right to proceed is terminated for default, the Government may take over and complete the work or cause it to be completed, and the contractor and his sureties shall be liable to the Government for any increased costs caused thereby. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages, if liquidated damages are provided in the contract, or for actual damages, if liquidated damages are not so provided.

18-618.3 *Preliminary Notice to Surety.*

(a) Whenever a termination for default appears imminent, a written notification of that fact (not an actual notice of default) may be given by the contracting officer to the surety at both its home and local offices.

(b) If it is requested by the surety, and agreed to by the contractor and his assignees, if any, arrangement may be made to have future checks mailed to the contractor in care of the surety. In such a case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing of checks.

18-618.4 *Procedure in Case of Default.*

(a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(i) the provisions of the contract and applicable laws and regulations;

(ii) the specific failure of the contractor and excuses, if any, made by the contractor for such failure;

(iii) the period of time which would be required for the Government or another contractor to complete the work as compared to the time required for completion by the delinquent contractor;

(iv) the effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(v) any other pertinent facts and circumstances.

(b) If the contracting officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the contracting officer shall not terminate the contractor's right to proceed, nor shall he charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes.

(c) If the contracting officer determines that termination for default is in the best interest of the Government, he shall promptly send a written notice to the contractor terminating his right to proceed. The notice shall:

(i) set forth the contract number and date;

(ii) describe the act or omissions, and the extent of the resultant delay, constituting the default;

(iii) state that the contractor's right to proceed further with performance of the contract (or of a specified portion of the contract) is terminated;

(iv) state that the Government may cause the contract to be completed and that the contractor will be held liable for any increased costs;

(v) state that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging increased costs;

(vi) state that the notice constitutes a decision (see 1-314), pursuant to the "Disputes" clause, that the contractor is in default as specified and that the contracting officer has determined that the delay is not excusable; and

(vii) state that the contractor has the right to appeal as specified in the "Disputes" clause.

(d) The same distribution shall be made of the termination notice as was made of the contract. A copy thereof shall also be furnished to the contractor's surety at the same time that the notice is furnished to the contractor. The surety at the same time should be requested to advise if he desires to enter into any arrangement for completion of the work. In addition, the disbursing officer involved shall be notified to withhold further payments under the terminated contract pending further advice which should be furnished at the earliest practicable time.

(e) Promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant which are on the site will be needed.

18-618.5 *Dealings with Surety—Take Over Agreements.*

(a) By reason of the surety's liability for damages resulting from the contractor's default, the surety has certain rights and interests in connection with the completion of the contract work and the application of the undisbursed funds available therefor. Because of such interests of the surety, proposals by the surety concerning the completion of the work should be given due consideration, and the decision as to the action to be taken shall be made on the basis of the best interest of the Government, including the possible effect of such action upon the Government's rights against the surety.

(b) Where the surety desires to complete the contract work, completion by the surety should normally be permitted unless the contracting officer has reason to believe that the persons, firms, or corporation by whom the surety proposes to have the work done are incompetent or unqualified so that the interests of the Government would be substantially prejudiced by their efforts.

(c) Because of the possibility of conflicting claims to unpaid prior earnings (retained percentages or amounts representing unpaid progress estimates) of the defaulting contractor, the surety may condition its offer of completion upon the execution by the Government of a "take over" agreement fixing the surety's rights to payment from such funds. In that event the contracting officer may in his discretion (but not before the effective date of termination) enter into a written agreement with the surety. Further, consideration should be given to having the agreement include both the surety and the defaulting contractor in order to eliminate any disagreement as to the contractor's residual rights, such as claims to unpaid prior earnings. The agreement shall provide that the surety will undertake to complete the work required by the contract in accordance with all the terms and conditions of the contract, and that the Government will pay the surety in the manner provided by the contract, but not in excess of the surety's costs and expenses, the balance of the contract price unpaid at the time of default; subject, however, to the following conditions:

(i) any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished prior to termination, shall be subject to claims by the Government against the contractor, except to the extent that such unpaid earnings may be required to permit payment to the completing surety of its actual costs and expenses incurred in the completion of the work, exclusive of its payments and obligations under the payment bond given in connection with the contract.

(ii) Such agreement shall not waive or release the Government's right to liquidated damages for delays in completion of the work, except to the extent that such delays may be excused under the provisions of the contract.

(iii) If the proceeds of the contract have been assigned to a financing institution, the surety may not be paid from retained percentages or amounts representing unpaid progress estimates earned by or payable to the contractor unless the assignee shall consent in writing to such payment.

(iv) In no event shall the surety be entitled to be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor. Furthermore, payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor shall be only on authority of (A) mutual agreement between the Government, the defaulting contractor, and the surety, or (B) determination of the Comptroller General as to payee and amount, or (C) order of a court of competent jurisdiction.

18-618.6 *Completion by Another Contractor.* Where the surety does not complete performance of the contract, the contracting officer normally will complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation, whichever procedure is most appropriate under the circumstances. The contracting officer must use reasonable diligence to obtain the lowest price available for completion.

18-618.7 *Procedure in Lieu of Termination for Default.* If, after due consideration, the contracting officer determines that termination is not in the best interest of the Government although the contractor is in default, the contracting officer may permit the contractor to continue the work, and the contractor and his sureties shall be liable to the Government for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

18-618.8 *Documentation in Contract File.* In all cases where a contractor's right to proceed is terminated for default or where the procedure authorized by 18-618.7 is followed, the contract file shall be well documented to explain fully the reasons for the action taken.

18-618.9 *Withholding for Labor Violations.* Any amounts necessary to pay laborer and mechanic wages due under the contract shall be withheld until evidence of proper payment is given, or such amounts shall be transferred to the Comptroller General. See 18-704.13.

18-618.10 *Liquidation of Liability.* In accordance with the provisions of the contract, the contractor and his surety are liable to the Government for resultant damages. All retained percentages of progress payments previously made to the contractor and any progress payments due for work completed prior to the termination of the right to proceed shall be used for the purpose of liquidating the liability of the contractor and his surety to the Government for such damages. Where the retained and unpaid amounts are insufficient to liquidate such liability, steps shall be taken to recover the additional sum from the contractor and his surety.

18-618.11 *Excusable Default.* Paragraph (e) of the clause in 7-602.5 provides that if, after the issuance of a notice of termination of the contractor's right to proceed, it is determined for any reason that the contractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for the convenience of the Government clause.

18-619 Termination of Fixed-Price Architect-Engineer Contracts for Default. Under the "Termination" clause in 7-607.4, the Government may terminate a fixed-price architect-engineer contract whenever the architect-engineer shall default in performance of the contract in accordance with its terms. The contracting officer shall consider the factors set forth in 18-618.4(a) in determining whether to terminate an architect-engineer contract for default. If the contracting officer determines that it is in the best interest of the Government to terminate for default the notice described in 18-618.4(c) shall be forwarded to the architect-engineer. If the contract is so terminated, the Government may take over the work and services and prosecute same to completion by contract or otherwise, and the architect-engineer shall be liable to the Government for any excess costs occasioned the Government thereby. Any such excess costs shall be liquidated by use of the retained percentages of progress payments previously made to the architect-engineer and any progress payments due for work completed prior to termination for default. If such retained funds are not sufficient to liquidate such liability, the contracting officer shall make a written demand upon the architect-engineer for the unliquidated balance thereof.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 7—Labor Standards for Contracts Involving Construction

18-700 Scope of Part. This Part deals with labor standards for construction contracts and for other contracts described in 12-106.1, as prescribed by the statutes, regulations, and determinations set forth below.

18-701 Applicability.

(a) The requirements of this Part apply to contracts which are solely or predominantly for construction as defined in 18-101.1, and also to certain non-construction contracts involving some construction work (see 12-106).

(1) These requirements are applicable only if the construction work is, or reasonably can be foreseen to be, performed at a particular site, so that wage rates can be obtained for the locality.

(2) These requirements do not apply to contracts solely for dismantling and demolition or exploratory drilling.

(3) These requirements do not apply to contracts requiring construction work which is so closely related to research, experiment, and development that it cannot be performed separately, or which is itself the subject of research, experiment, or development.

(4) These requirements are applicable to manufacture or fabrication of construction materials and components on the site by a contractor or subcontractor under a contract otherwise subject to these requirements, but are not applicable to other manufacturing or furnishing of equipment, components or materials.

(5) These requirements are not applicable to employees of railroads operating under collective bargaining agreements which are subject to the provisions of the Railway Labor Act.

(b) Under contracts for construction as described in (a) above, the requirements of this Part apply only to work performed by mechanics and laborers at the site of the work.

(1) "*Mechanics and laborers*" means those workers and working foremen who work predominantly with their hands or with tools and equipment, whether employed by a prime contractor or by a subcontractor of any tier. This term includes apprentices and trainees, except where otherwise noted, but it does not include office workers, superintendents, technical engineers, or scientific workers.

(2) The "*site of the work*" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of proximity. For example, if a small office building is being erected, the "site of the work" will normally include no more than the building itself and its grounds and other land or structures "down the block" or "across the street" which the contractor or subcontractor uses in the course of his performance on the particular contract. In the case of larger contracts, such as for an airport or a dam, the "site of the work" is necessarily more extensive and includes the whole area in which the contract construction activity will take place. Fabrication plants, "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" *provided*, they are dedicated exclusively or nearly so to performance on the contract and are so located in proximity

to the actual construction location that it would be reasonable to include them. Once the limits of "site of the work" have been determined, the Secretary's wage rate decision is applicable only to those mechanics and laborers employed by a contractor or subcontractor within such limits (that is, upon the "site of the work"), including drivers who temporarily leave the "site" to transport materials and equipment used in the course of contract operations.

(3) Not included in the "site of the work" are permanent home offices or branch plant establishments of a contractor or subcontractor, his fabrication plant and tool yard establishments, whose locations and continuance are governed by his general business operations. This is so even though mechanics and laborers working at such an establishment may repair or maintain machinery used in contract performance, or make doors, windows, frames, or forms. Regardless of the activities performed at such establishments, the Secretary's wage rate determination does not apply because they do not constitute the "site of the work". However, if such mechanics or laborers are required to go to a place which is the "site of the work" to perform activities on the contract there, the Secretary's wage rate decision is applicable for the actual time so spent, not including travel.

(4) Contracts with bona fide material suppliers or with manufacturers to produce, supply or deliver items to the "site of the work" for use in the construction activities are not subject to Davis-Bacon and related acts, nor is transportation by common carrier over regular routes. However, if such a materialman, manufacturer or carrier undertakes to perform a contract, or some part of a contract as a subcontractor, his mechanics and laborers employed at the "site of the work" are subject to the Secretary's wage rate decision in the same manner as those employed by any other contractor or subcontractor.

18-702 Statutes, Regulations, and Determination.

18-702.1 *Statutes*.

(a) *Davis-Bacon Act*. The Davis-Bacon Act (Act of March 3, 1931, as amended, 40 U.S.C. 276a) provides that certain contracts over $2,000 entered into by any Department for the construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States shall contain a provision (see 7-602.23(a)(i) to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wage, including basic hourly rates and fringe benefits payments, as determined by the Secretary of Labor.

(b) *Copeland Act*. The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force or otherwise, any person employed within the United States in the construction or repair of public buildings or public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment. In accordance with regulations of the Secretary of Labor issued pursuant to the Copeland Act, certain contracts entered into by any Department must contain a provision (see 7-602.23(a)(v)) to the effect that the contractor and any subcontractor shall comply with the regulations of the Secretary of Labor under the Act.

(c) *Contract Work Hours and Safety Standards Act*. In accordance with the requirement of the Contract Work Hours and Safety Standards Act (40 U.S.C.

327-333), certain contracts entered into by any Department must contain a clause (see 7-602.23(a)(ii)) to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any work week unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any work week whichever is the greater number of overtime hours at not less than one and one-half times his basic rate of pay.

18-702.2 *Department of Labor Regulations*. Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (5 U.S.C. 133z-15), the Secretary of Labor has issued regulations (Subtitle A, title 29, Code of Federal Regulations) providing for the administration and enforcement of these statutes in construction contracts. Each Department shall comply with the regulations, rulings, interpretations, and decisions the Department of Labor issued pursuant to the above provisions. If a question arises concerning such compliance, the Department concerned shall attempt to resolve it with the appropriate office of the Department of Labor. In any case where resolution of the question by higher authority is deemed appropriate, such question shall be submitted, for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (Installations and Logistics); for the Navy, to the Chief of Naval Material, ATTN: Labor Relations Advisor; for the Air Force, to the Director of Contracting and Acquisition Policy, HQ USAF, ATTN: RDC, Labor Relations; for the Defense Logistics Agency, to Headquarters, Defense Logistics Agency, DLA-AP; and for the National Security Agency, to the Director of Procurement. Any such questions which are not resolved by the foregoing procedure shall be referred to DUSDRE(AP) for further action.

18-703 Contract Clauses.

18-703.1 *Clauses for General Use*. Every construction contract in excess of $2,000 for work within the United States shall include the clauses listed below. (These clauses are set forth in 7-602.23(a).)

Davis-Bacon Act (40 U.S.C. 276a to a-7)
Contract Work Hours and Safety Standards Act—Overtime Compensation.
Apprentices and Trainees.
Payrolls and Basic Records.
Compliance With Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.[4]
Disputes Concerning Labor Standards.

18-703.2 *Overseas Contracts*. Every construction contract (a) in excess of $2,000 for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, or Johnston Island shall include (i) the clause entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, in 7-602.23(a)(ii); (ii) the Subcontracts clause in 7-602.23(a)(vii), except that the first sentence thereof shall be modified to refer only to the clause entitled Contract Work Hours and Safety Standards Act — Overtime Compensation, Subcontracts, and Contract Termination — Debarment, and (iii) the clause entitled Contract Termination — Debarment in 7-602.23(a)(viii) except that the clause shall be modified to refer only to the clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation and Subcontracts; (b) in excess of $10,000 requiring payment of minimum wages determined in accordance with the Davis-Bacon Act for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll or Johnston Island shall also include the clause entitled "Apprentices and Trainees" in 7–602.23(a)(iii).

18–703.3 *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses in 7–602.23(a) shall be inserted therein but shall be prefaced by the provision in 7–602.23(b).

18–704 Administration and Enforcement.

18–704.1 *Policy.*

(a) *General.* To comply with the Department of Defense policy of assuring full and impartial enforcement of the labor standards laws in the administration of construction contracts, each Department shall maintain a continuing effective enforcement program which shall include:

(i) training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities;

(ii) assuring that contractors and subcontractors are informed, prior to commencement of work, of their obligations under the labor standards provisions of their contracts;

(iii) adequate payroll and on-the-site inspections and employee interviews to determine compliance, and prompt initiation of corrective action when required;

(iv) prompt investigation and disposition of complaints;

(v) prompt submission of all reports required by this Part; and

(vi) periodic review of field enforcement activities to assure compliance with applicable regulations and instructions.

(b) *Responsibility.* The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his and any subcontractor's responsibilities thereunder. In order to assure that the contractors and subcontractors fully understand the labor standards provisions in their contracts and the attendant administrative requirements, the following procedures shall be followed.

(1) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to (i) employment of foremen, laborers, mechanics and others, (ii) wages and fringe benefits payments, payrolls and statements, (iii) differentiation between subcontractors and suppliers, (iv) additional classifications, (v) benefits to be realized by contractors and subcontractors in keeping complete work records, (vi) penalties and sanctions for violations of labor standards provisions, and (vii) the provisions of 18–701(a) which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act; Contract Work

Hours and Safety Standards Act; Copeland ("Anti-Kickback") Act; and Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations). Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor.

(2) *Preconstruction Conference.* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted. Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter is indicated, the contractor shall be advised of the requirements of 18-704.3(a).

18-704.2 *Wage Determinations.*

(a) *In General.*

(1) Wage determinations reflecting the prevailing wages, including fringe benefits, for laborers and mechanics in a particular area are issued by the Secretary of Labor.

(2) In formally advertised procurements, whenever—

(i) it appears before bid opening that a wage determination may expire before award, or

(ii) a determination actually does expire before bid opening,

a new wage determination shall be obtained. The scheduled bid opening date shall be postponed, if necessary, to allow a reasonable time to (a) obtain the determination, (b) modify the IFB to reflect the new determination and (c) permit bidders to amend their bids. Even if the new determination does not change the wage rates, and hence would not warrant amended bids, the solicitation must nevertheless be modified to include the number and date of the new determination.

(3) In negotiated procurement, whenever (i) it appears that a wage determination will expire before award is made or (ii) the determination actually does so expire, a new wage determination shall be obtained. If the new determination makes a change in the wage rates, the wage rate information specified in the new determination shall be furnished to (a) all prospective offerors to whom a solicitation has been sent if the closing date for receipt of proposals has not yet occurred, or (b) to all prospective offerors who have submitted proposals if the closing date is past. All prospective offerors to whom such information has been furnished shall be given a reasonable opportunity to amend their proposals. The contracting officer need not delay opening and reviewing proposals or discussing them with the respective offerors while a new determination is being obtained and offerors are preparing amended proposals. Offerors should be requested to extend the period for acceptance of any proposal if that period expires or may expire while the contracting officer is waiting for a new wage determination.

(4) When a new determination has been received before award, but an award is made before the expiration date of the original determination, the new determination must be treated as a superseding decision in accordance with (g) below, except that the expiration of the new determination shall be controlled by the date thereon and not by the date on the determination which it replaces.

(5) After bids have been opened in formally advertised procurement, if (i) it becomes apparent that the wage determination will expire before award or (ii) in fact the wage determination does expire before award, the Secretary, or his designee at a level no lower than the Head of a Procuring Activity, may, upon finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business, submit a written request to the U. S. Department of Labor, Washington, D.C. 20210, for an extension of the expiration date. If an extension is not requested, or if it is requested and denied, a new determination shall be obtained. If the new determination changes the wage rates, the IFB shall be canceled and the procurement readvertised using the new wage rates.

(b) *Types of Wage Determinations.*

(1) A general area wage determination is issued for use by more than one Government agency and provides wage rates for all contracts for the types of construction designated in the determination which may be awarded within a given geographical area. Such a determination is published in the Federal Register, is the only type which is automatically issued by the Department of Labor on a continuing basis, and, although it may be modified or superseded from time to time, contains no expiration date. Such determinations shall be used whenever possible.

(2) An installation determination provides wage rates for all contracts for work described in the determination which may be awarded at an installation or within a given geographical area (usually a county) during the 120–day life of the determination. This type of determination is used only when no general area wage determination has been issued, and may be obtained for installations or areas where continuing construction activity is anticipated.

(3) An individual determination is provided by the Department of labor for use in a contract not covered by either of the above types of determination. Such a determination is effective for a 120 day period.

(4) Wage determinations provide wage rates for the types of construction designated therein, such as building, heavy, highway, residential, and dredging, and shall be used only for the designated types of construction. It is particularly important to insure that residential rates rather than building rates are used for family housing construction, alteration, or repair.

(c) *Obtaining General Area Wage Determinations.* General area wage determinations, and modifications thereto, are published in the Federal Register. Information as to the existence and applicability of such determinations may be obtained from the appropriate District Engineer, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command Division Office, for the Navy; from the appropriate Contractor Industrial Relations Specialist, for the Air Force; and from the appropriate DCAS Region (ATTN: ILRO), for the Defense Supply Agency.

(d) ***Obtaining Installation or Individual Wage Determinations;***

(1) Requests for installation or individual wage determinations shall be prepared on Standard Form 308, "Request for Determination and Response to Request." SF 308 shall be filled out as follows:

a. Under "Department, Agency, or Bureau" enter the name of the requesting Department followed in parentheses by the name of the installation submitting the request (and, for the Army, the name of the Engineer District).

b. Under "Description of Work" include a statement of whether an installation or individual determination is desired. When the request indicates a type of work other than building, heavy or highway, it is of particular importance, in order to avoid delay, that the request be accompanied by (i) any pertinent wage payment information which may be available, and (ii) a copy of the pertinent portions of the specifications or a detailed description of the work to be performed. Where the Secretary of Labor has issued a general area wage determination, a request should be submitted only when the type of work to be performed is not included in the description of work set forth in the decision. If additional space is needed, a separate attachment may be submitted with the form. Additional information requirements for installation determination requests are set out at subparagraph *f* below.

c. Under "Location of Project (City or Other Description)," state the installation or area to be covered or exact location of the proposed project, as appropriate. If the project is not in a city, town, or village, state the distance and direction from the nearest community or other point of reference. If river or other work covering an extended project site is involved, explain the full extent of the location with references to data identifying the geographic limits of the project, such as side of river and direction from several reference points.

d. For individual determinations, check only those craft classifications which are actually anticipated to be necessary for the work. Craft classifications which are anticipated but are not on the form may be entered in blank spaces or on a separate list attached to the form. Determinations should be requested only for craft classifications which are recognized in the area or in the construction industry. Do not check any craft classifications when an installation determination is requested.

e. When it is known that wage patterns for the area involved are not clearly established, the following information concerning public contracts being performed or recently completed in the area should be furnished, if reasonably available, as an attachment to Form SF 308 to aid the Department of Labor.

(i) names and addresses of contractors;
(ii) locations, approximate costs, dates of construction, and types of projects;
(iii) number of workers employed in each classification on each project; and
(iv) wage rates, including fringe benefits, paid such workers.

Wage rates determined for public construction by state or local officers pursuant to state or local prevailing wage legislation and any other pertinent information should also be sent to the Department of Labor if reasonably available.

f. In every case where an installation wage determination is being requested, the following information shall be provided in an attachment to the SF

308, in addition to other applicable requirements contained in subparagraphs *a* through *e* above.

(i) A complete statement of reasons for requiring an installation type of wage determination for the installation.

(ii) A complete statement of the incidence of use of the last previously issued installation determination, the total dollar amount of the contract awarded thereunder, and an estimate of the use of any new determination during its 120–day life. This should include a brief description of the planned projects (i.e., commercial, residential, heavy or highway), the estimated cost of each project, and the kinds of laborers and mechanics likely to be employed.

(2) Requests for determinations shall be initiated and forwarded as provided in *a* through *d* below to the appropriate regional office of the Department of Labor. Requests shall be submitted in time to reach the Department of Labor at least 30 days in advance of the date selected for issuance of the solicitation. When, due to an emergency, a wage determination is required immediately, or when any information concerning wage determinations is needed, the requiring office may request assistance from the appropriate Departmental office listed in *a* through *d* below.

a. For the Army—SF 308 shall be initiated by the office responsible for the preparation of specifications of the awarding of contracts, and shall be forwarded in triplicate to the appropriate District Engineer. The original and one copy of SF 308 shall be sent by the District Engineer to the appropriate regional office of the Department of Labor.

b. For the Navy—Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original and one copy of SF 308 shall be sent to the appropriate regional office of the Department of Labor with a copy to the cognizant Naval Facilities Engineering Command Division Office. Requests relating to contracts of other commands or offices should be processed through the cognizant Naval Facilities Engineering Command Division Office.

c. For the Air Force—Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities contracts. The original and one copy of SF 308 shall be submitted to the appropriate regional office of the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Labor Relations Advisor and one copy retained in the requesting office's files.

d. For the Defense Supply Agency—Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original and one copy SF 308 shall be sent to the appropriate regional office of the Department of Labor with a copy to the appropriate DCAS Region, Attn: ILRO.

(e) *Review of Wage Determination Decisions*. Immediately upon its receipt, the requesting officer shall examine the wage determination and inform the appropriate office indicated in (d)(2) above of any changes considered to be necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

(f) *Rates To Be Included in Solicitations*. In solicitations for work in an area covered by either a general area wage determination, or an installation determination, there shall be included only the rate schedule or individual rates applicable to the particular type of construction involved. In cases requiring the utilization of more than one schedule, the type of work to which each schedule is applicable shall be defined. If all or a part of a schedule is excluded pursuant to this subparagraph, the provision in 7–2003.57 shall be included in the solicitation.

(g) *Modifications (Including Superseding Decisions)*.

(1) A wage determination, may be modified by the Secretary of Labor through issuance of a modification, which may be (i) a "letter of inadvertence," which is used to correct a clerical error in a wage determination, (ii) a "notice of modification," which specifies a change in a wage determination, or (iii) a "superseding decision," which is a reissuance of a wage determination with changes incorporated. All modifications of installation and individual determinations (including superseding decisions) expire on the same day as the original determination. Since the need for inclusion of a modification of an installation or individual determination in a solicitation is determined by the time of receipt in the Department concerned, all such modifications shall be time-date stamped immediately upon receipt by the offices having responsibility for submission of wage rates requests to the Department of Labor, as designated in 18–704.2(d)(2). The need for inclusion in a solicitation of a modification of a general area wage determination is determined by the date of publication in the Federal Register.

(2) A modification which affects wage rates included in a solicitation, and which was time-date stamped, as required in (1) above, on or before the tenth calendar day (or, in the case of a general area wage determination, which was published in the Federal Register on or before the tenth calendar day) preceding bid opening in formally advertised procurements or award in negotiated procurements shall be processed upon receipt by the CONTRACTING OFFICER as follows (*Note distinction between* receipt by the office having responsibility for time-date stamping and receipt by the CONTRACTING OFFICER.):

- (i) in formally advertised procurements—
  - (A) if the modification reaches the contracting officer before bid opening, he shall issue an amendment to the invitation for bids and, if necessary, extend the date of bid opening;
  - (B) if the modification reaches the contracting officer after bid opening but before award—
    - (I) then if the modification only increases wage rates and the low responsible responsive bidder agrees in writing to the increase without a change in his bid price, the contracting officer shall incorporate the modification into the contract;
    - (II) but if the modification decreases any included wage rates, or if there is any increase which the low responsible responsive bidder will not agree to in writing without a change in his bid price, the contracting officer shall readvertise the procurement;
  - (C) if the modification reaches the contracting officer after award—

(I) then if the wage determination has not yet expired or been rescinded, he shall issue a change order replacing or adding the appropriate material, effective retroactively to the date of award;

(II) if the wage determination has expired or been rescinded he shall issue a change order after first obtaining an advisory opinion in accordance with (h) below;

(ii) in negotiated procurements—

(A) if the modification reaches the contracting officer before award, he shall notify the prospective contractors and allow them sufficient time to adjust their offers accordingly;

(B) if the modification reaches the contracting officer after award, he shall follow the procedures in (i) (C) above.

(3) A modification which affects wage rates included in a solicitation, and which was received by the requesting office later than the tenth calendar day (or, in the case of a general area wage determination, which was published in the Federal Register later than the tenth calendar day) preceding bid opening in formally advertised procurements or award in negotiated procurements, must be included in the solicitation only where such action will not delay bid opening or otherwise create excessive administrative burdens and may otherwise be disregarded. A modification which accordingly is not included in the solicitation shall not be included in advertised contracts after bid opening or in negotiated contracts after award.

(h) *Contracts Awarded Without Required Wage Rates*. If a contract is inadvertently awarded without the required wage determination or modification thereto, and such determination either was not issued by the Department of Labor or has expired or been rescinded, then the contracting officer shall submit through channels a request to the appropriate regional office of the Department of Labor for an advisory opinion setting forth the wage rates as of the date of award. Upon receipt of the opinion, the contracting officer shall issue a change order replacing or adding the appropriate material, effective retroactively to the date of award.

(i) *Formal Advertising Without a Wage Determination*. In the event emergency conditions arise requiring work to be advertised before an appropriate wage determination can be obtained, a notice shall be included in the invitation for bids that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the specifications. Under no circumstances may bids be opened until a reasonable time after the wage determination has been furnished to all bidders.

(j) *Posting*. The contractor must keep a copy of the wage determination and of any approved additional classifications posted at the site of the work in a prominent place where they can be seen easily by the workers. The Department of Labor Form WH 1321, Notice to Employees Working on Federal or Federally Financed Construction Projects, shall be furnished to the contractor for posting with wage rates. The name and address of the officer responsible for the administration of the contract shall be inserted in the blank box in the middle of the poster to inform workers where complaints or questions concerning labor standards may be made.

(k) *Wage Determinations Appeals.* The Secretary of Labor has established the Wage Appeals Board, one of whose powers is to decide appeals concerning questions of law and fact arising from decisions of the Associate Administrator with regard to wage determinations issued under the Davis-Bacon Act and related minimum wage statutes. The Secretary of the Department concerned, after coordination with the Office of the Assistant Secretary of Defense (Installations and Logistics), may file a petition for review of, or for intervention in, any matter which it appears may appropriately be brought before the Board. Such petitions shall be prepared and submitted in accordance with procedures established for the Wage Appeals Board in Part 7, Subtitle A, Title 29, Code of Federal Regulations.

(l) *Labor Standards for Construction Work Performed Under Facilities Contracts.* If it is not certain at the time of contract award that construction work may be required under a facilities contract, the clause in 7–705.5 shall be included in the contract. It is the contracting officer's responsibility to determine whether the Davis-Bacon and Copeland Acts apply. Upon determination by the contracting officer that the Davis-Bacon Act applies to any item of work to be performed under the contract, the contracting officer shall obtain a wage determination and incorporate the determination and the clauses listed in the clause in 7–705.5 into the contract.

18–704.3 *Fringe Benefits.*

(a) In computing wages paid to a laborer or mechanic the contractor may include only the following items:

(i) amounts paid in cash to the laborer or mechanic, or deducted from such payment in accord with 29 C.F.R., Part 3;

(ii) contributions, except those required by Federal, State, or local law, which the contractor makes irrevocably to a trustee or a third party pursuant to any fund, plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship, or any other fringe benefit specifically enumerated in the wage determination decision involved; and

(iii) other contributions or anticipated costs to the extent such contributions or anticipated costs have been expressly approved by the Secretary of Labor.

(b) When the wage determination decision specifies fringe benefits payments, the contractor may satisfy his obligation under the clause entitled Davis-Bacon Act by providing wages consisting of any combination of contributions or costs as specified in (a), provided that the total cost of such combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination decision for the classification of laborer or mechanic concerned. Wages provided by the contractor, or fringe benefits payments required by the wage determination decision, may include items which are not stated as exact cash amounts. In such cases, the interested parties shall determine the cash equivalent of the cost of such items when necessary to determine whether the wages provided by the contractor satisfy the requirements of the wage determination. In the event the interested parties are unable to agree on the cash equivalent, the contracting officer, in accordance with paragraph (b) of the clause entitled Davis-Bacon Act, shall submit the question for determination to the Department of Labor through the appropriate channel specified in 18-704.2(d)(2). The submission shall include a comparison of the payments, contributions or costs contained in the wage determination decision with those made or proposed by the contractor as equivalent thereto, together with the comments and recommendations of the contracting officer.

(c) For purposes of computing overtime payments the regular or basic rate of pay specified in the wage determination, or that actually paid by the contractor if higher, shall be used. No reduction may be made for amounts deducted from such rate for employee contributions to fringe benefits, but the contractor's contributions, costs, or payment of cash equivalents for fringe benefits shall be excluded from the computation. In no event may such exclusion result in a computation of overtime on a rate lower than the rate of pay specified in the wage determination.

18-704.4 *Additional Classification.*

(a) *Requirements.* Whenever any laborer or mechanic, including apprentices and trainees, is to be employed in a classification not listed in the wage determination decision applicable to the contract, the contractor concerned must submit a statement of the proposed additional classification and minimum wage rate, including fringe benefits payments, if any. DD Form 1565, "Request for Authorization of Additional Classification and Rate," shall be used for such proposals. Upon approval the additional classification and rate shall be posted with the wage determination decision.

(b) *Approval.* Upon receipt of the request for authorization, the contracting officer shall review it to determine whether it meets the following criteria:

(i) the classification cannot be fitted into one contained in the applicable wage determination;
(ii) the classification is generally recognized in the area of construction industry; and
(iii) the proposed wage rate, including any fringe benefits, conforms to the wage determination decision contained in the contract.

If the above criteria are met and no interested party objects to the proposed classification, the contracting officer or his representative shall approve the proposal and submit an information copy to the Department of Labor. If the criteria are not met or the interested parties cannot agree on the proposal, the contracting officer or his representative shall submit the proposal together with available pertinent information and his recommendation to the Department of Labor for final determination. Upon approval, the contracting officer shall notify the contractor and instruct him to post the approved rate and classification in accordance with 18-704.2(j).

(c) *Submission.* The completed DD Form 1565 (with information and recommendations where appropriate) shall be forwarded to the U.S. Department of Labor, Washington, D.C. 20210, for information or final determination as required.

18-704.5 *Apprentices and Trainees.*

(a) A contractor may employ apprentices on Government construction projects. The contractor, prior to using apprentices on the contract work, must submit to the contracting officer written evidence of registration of such employees in a program which has been accepted either by the Bureau of Apprenticeship and Training (BAT), U. S. Department of Labor, or by a state apprenticeship and training agency approved and recognized by BAT. Trainees may be employed only under programs approved by BAT. The contractor also shall be required to submit written evidence of apprentice to journeyman and trainee to journeyman ratios and wage rates including fringe benefits payments established for his program in the project area. Upon receipt of such submission, the contracting officer shall accept these ratios and rates for the purpose of determining the contractor's compliance with the Davis-Bacon Act clause.

(b) Whenever a contractor has classified employees as apprentices or trainees without complying with the foregoing requirements, the classification shall be rejected, and the contractor shall be required to pay such employees at the rates applicable to the classification of the work they actually performed.

(c) *Alleged Violations.* The contracting officer shall process promptly complaints of alleged violations (see 18-704.8(b) and 18-704.9).

18-704.6 ***Subcontracts.*** Upon award of each subcontract, a DD Form 1566, "Statement and Acknowledgment," will be executed by the contractor and subcontractor in compliance with the Subcontractors clause in 7-602.37.

18-704.7 ***Payrolls and Statements.***

(a) *Submission.* Within seven calendar days after the regular payment date of the payroll week covered, the contractor is required to submit, or cause to be submitted, for himself and his subcontractors copies of weekly payrolls and weekly payroll statements in compliance with 7-602.23(a)(iv). (See 16-803.1(c) for payroll statement.)

(b) *Withholding for Non-submission.* If the contractor fails to submit his or his subcontractors' payrolls promptly, the contracting officer shall withhold approval of such amount of the progress payment estimate as he considers necessary to protect the interests of the Government, or of the employees of the contractor or any subcontractor.

(c) *Examination.* The contracting officer shall make such examination of the payrolls and statements as may be necessary to assure compliance with contract, statutory, and regulatory requirements. Particular attention should be given to the correctness of classifications and rates, fringe benefits payments, hours worked, deductions, and ratios of laborers, helpers, apprentices, or trainees to mechanics. With respect to fringe benefits payments, contributions made or costs incurred on other than a weekly basis shall be considered as a part of required weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* Payrolls and statements shall be preserved for a period of three years from completion of the contract, and shall be made available at the request of the Department of Labor at any time during such period.

18-704.8 *Compliance Checking.*

(a) *Regular Compliance Checks.* The contracting officer administering the contract shall cause regular checks to be made to assure compliance with contract labor standards requirements. Contracts of six months or shorter duration shall be checked, if feasible, before final payment is made. Longer contracts shall be checked with such frequency as may be necessary. Continuous and careful checking is essential to the success of the labor standards enforcement program. Regular compliance checking includes the following activities:

(i) employee interview conducted by the inspector or contracting officer or his representative to determine correctness of classifications and rate of pay, including fringe benefits payments. DD Form 1567, "Labor Standards Interview," shall be used for recording such interviews;

(ii) on-site inspections to check type and classifications of work performed, number of workers, and fulfillment of posting requirements;

(iii) payroll reviews to assure that payrolls of prime contractors and subcontractors have been submitted on time and that such payrolls are complete and correct (see 18-704.9(c)); and

(iv) comparison of the above information with available data, including daily inspector's report and daily logs of construction, to assure consistency.

(b) *Special Compliance Checks*. A special compliance check is conducted to determine whether a question regarding compliance with labor standards requirements is sufficient to warrant an investigation. Situations which may require a special compliance check include the following:

(i) inconsistencies, errors or omissions detected during regular compliance checks;

(ii) receipt of a complaint alleging violations; when the complaint is not specific enough to enable a check or investigation to be conducted, the complainant shall be so advised and invited to submit additional information.

18-704.9 *Investigations*.

(a) *General*. Investigations shall be made whenever a special compliance check indicates either that a complaint has merit or that possible violations occurred which are substantial in amount, willful, or not corrected. The contracting officer is responsible for the proper conduct of the investigation. The investigation shall include all aspects of the contractor's compliance with labor standards requirements, and shall not be limited to a specific complaint, allegation, or possible violation disclosed during compliance checking. The investigation should be made by personnel familiar with labor laws and their application to contracts. If the investigator has not previously conducted investigations, he should contact his nearest labor relations representative in accordance with organizational channels. In each investigation, the investigator shall comply with (b) through (k) below.

(b) *Examination of Contract Documents*. The contract shall be checked for inclusion of labor standards provisions and the wage determination. The contract file shall be checked for completeness of the following items, if applicable:

(i) list of subcontractors;

(ii) payrolls and payroll statements for the contractor and subcontractors;

(iii) approvals of additional classifications;

(iv) data regarding apprentices and trainees as required by 18-704.5;

(v) daily inspector's report or other inspection reports;

(vi) employee interview statements; and

(vii) Statement and Acknowledgment (DD Form 1566).

(c) *Examination of Payrolls and Payroll Statements*. Contractors' and subcontractors' weekly payrolls and payroll statements should be checked for completeness and accuracy with respect to the following items:

(i) identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(ii) inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;
(iii) computation of daily and weekly hours;
(iv) computation of time-and-one-half for work in excess of eight hours per day or 40 hours per week in accordance with 18–704.3(c);
(v) gross weekly wages;
(vi) deductions;
(vii) computation of net weekly wages paid to each employee;
(viii) ratio of laborers, helpers, apprentices and trainees to mechanics;
(ix) apprenticeship and trainee registration and ratios; and
(x) computation of fringe benefits payments.

(d) *Notice to Contractor.* The contractor shall be informed by the investigator that he is investigating compliance with pertinent contract labor standards provisions, and outline the general scope of the investigation, which includes examining pertinent records and interviewing employees. The names of the employees to be interviewed shall not be divulged to the contractor. At this time, the investigator shall verify the exact legal name of the firm, its address, and the names and titles of the principal officers. If verification of the investigator's authority is requested, he shall obtain an appropriate letter from the contracting officer and provide it to the contractor.

(e) *Interviewing Complainant.* Complaint investigations shall include an interview with the complainant, except when this is impracticable. The interview shall cover all aspects of the complaint to assure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, its omission shall be explained in the investigator's report (see 18–704.10).

(f) *Examination of Contractor's Time and Work Records.* Contractor and subcontractor records such as basic time cards, books, canceled payroll checks, and fringe benefits payments records shall be compared with submitted payrolls. When discrepancies are found, pertinent excerpts or copies of the records shall be included in the investigation report as provided in (g) below, together with a statement of the discrepancy and any explanation obtained by the investigator. In cases where wages include contributions or anticipated costs for fringe benefits payments requiring approval of the Secretary of Labor as provided in 18–704.3(a)(iii), the contractor's records shall be examined to assure that such approval has been obtained and that any requirements specified in the approval have been met.

(g) *Transcribing of Contractor's Records.* The contractor's records shall be transcribed whenever they contain information at variance with payrolls or other submitted documents. The transcriptions shall be made in sufficient detail to permit them to be used to check computations of restitutions and to determine amounts to be withheld from thdl contractor. Transcriptions shall follow the form used by the contractor. Comments or explanations concerning he transcriptions shall be placed on separate memoranda or in the narrative report.

(h) *Interviewing Employees.* The investigator shall interview a sufficient number of employees or former employees, representative of all classifications, to develop information regarding methods and amount of payments, deductions, hours worked and type of work performed. DD Form 1567, "Labor Standards Interview," shall be used for employee interviews. Employees shall be interviewed during working hours at the job site if the interview can be conducted privately. Former employees or others may be interviewed elsewhere. Interviews shall be arranged to cause the least inconvenience to the employer and employee. When personal interviews are impractical, information may be obtained by mail. The investigator shall not disclose to the employee any information, finding, recommendation, or conclusion relating to the investigation, except to the extent necessary to obtain the required information. An employee's statement shall not be divulged to his employer, nor to anyone other than Government representatives working on the case, without the employee's written permission. The investigator shall request the employee to sign his statement, and to initial any changes thereto, and shall indicate his evaluation of the employee's credibility.

(i) *Interviewing the Foreman*. An interview of the foreman serves to provide information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision, and the correctness of the foreman's classification as a supervisory employee. All the conditions established for conduct of employee interviews, and the recording and use of data obtained, also apply to foreman interviews.

(j) *Checking Posting Requirements*. The investigator shall determine whether the wage determination decision, any modifications thereto, and any additional classifications are posted as required.

(k) *Interviewing the Contractor*. Whenever information indicating possible violations has been developed, the investigator shall interview the contractor involved. At the outset of the interview, the contractor shall be advised that the purpose of the interview is only to obtain such data as the contractor may desire to present in connection with the investigation, and that the interview does not mean that a violation has been found or that a requirement for corrective action exists. During the interview the investigator shall not disclose the identity of any individual who filed a complaint, or whom he has interviewed.

18-704.10 *Investigator's Report*. The investigator shall submit a written report, in duplicate, to the responsible contracting officer. The report shall include, if applicable:

(i) basis for the investigation, including the name of the complainant;
(ii) names and addresses of prime contractors and subcontractors involved, and names and title of their principal officers;
(iii) contract number, date, and amount of prime contract, and date and number of wage determination therein;
(iv) description of the contract and subcontract work involved;
(v) summary of the findings with respect to each of the items listed in 18-704.9;
(vi) conclusions, indicated by a concise statement, concerning—
    (A) the types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours Standards Act;

(B) whether violations are considered to be willful, or due to the negligence of the contractor or his agent;
(C) the amount of funds withheld from the contractor; and
(D) other aspects of violations found; and
(vii) the exhibition portion of the report, indexed and appropriately tabbed, including copies of the following when applicable—
(A) complaint letter;
(B) contract wage determination;
(C) preconstruction letter and memorandum of preconstruction conference;
(D) payrolls and statements indicating violations;
(E) transcripts of pertinent records of the contractor, and approvals of fringe benefits payments;
(F) employee interview statements;
(G) foremen interview statements;
(H) statements of others interviewed, including Government personnel;
(I) detailed computations showing kickbacks, underpayments, and liquidated damages;
(J) summary of all payments due to each employee, or a fund plan or program, and liquidated damages; and
(K) receipts and canceled checks.

18-704.11 *Notification to the Contractor.* Upon receipt of the investigator's report, the contracting officer shall review it, and make appropriate findings. Employee statements the disclosure of which has not been authorized shall not be used to support any findings adverse to the contractor. In any case where the investigation as a whole indicates that adverse findings are warranted but such findings are not supported adequately by other evidence, the contracting officer may request any employee whose statement is deemed necessary to reconsider his refusal to authorize its disclosure. Except in cases involving the criminal provisions of the Copeland Act and the Contract Work Hours Standards Act, the contracting officer shall inform the contractor in writing of (i) his findings, (ii) any proposed corrective actions, and (iii) the contractor's right, if he disagrees with the findings or proposed corrective action, to request that the basis for the contracting officer's findings be made available and to submit, within a reasonable time, written or oral rebuttal information. The contracting officer shall request the contractor to make any payments of restitution or liquidated damages which he finds to be due, regardless of whether the violations are considered willful or nonwillful. In cases where the request includes an assessment for liquidated damages, the contractor shall be advised that he may request relief from such assessment. In the event rebuttal information is submitted, the contracting officer shall reconsider his findings and notify the contractor of his decision in the light of such information. Under no circumstances will the contractor be permitted to examine the investigation report; however, upon request by the contractor, the basis for the findings of the contracting officer may be made available to him.

18-704.12 *Contracting Officer's Report.*

(a) After taking the action prescribed in 18-704.11, the contracting officer shall forward, in accordance with (b) below, a report which shall include:

(i) DD Form 1568, "Labor Standards Investigation Summary Sheet;"
(ii) his findings;
(iii) statement as to the disposition of any contractor rebuttal to the findings;
(iv) statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;
(v) statement as to the disposition of funds available;
(vi) recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction or nonassessment of liquidated damages, whether the contractor should be placed on the list of Debarred, Ineligible and Suspended Bidders, and whether the file should be referred for possible criminal prosecution); and
(vii) the exhibit portion of the report which shall include, when applicable;
    (A) investigator's report;
    (B) copy of contractor's written rebuttal or a summary of his oral rebuttal of the contracting officer's findings;
    (C) copies of correspondence between the contractor and contracting officer, including a statement of the specific violations found, corrective action requested, and contractor's letter of acceptance or rejection;
    (D) evidence of payment of restitution or liquidated damages, such as copies of receipts, canceled checks, or supplemental payrolls; and
    (E) letter from the contractor requesting relief from the liquidated damages provisions of the Contract Work Hours Standards Act.

(b) Where the investigation reveals no violations, where underpayments total less than $500 and are nonwillful, and where restitution and liquidated damages, if any, have been paid and compliance during the remainder of the contract is anticipated, the contracting officer may process the report, except in cases involving Air Force contracts, by closing the case without forwarding a report unless one has been requested. Where an Air Force contract is involved, a concise narrative report shall be submitted to the major Air Command Headquarters and the Air Force Liaison Officer (AFLO) having jurisdiction, and shall include, as a minimum, the contracting officer's findings and decision, amount of restitution paid each employee, and the amount of liquidated damages, if any. In all other investigations the contracting officer shall forward his report through channels as specified in (1) through (4) below. When the contracting officer concludes that a criminal statute has been violated, he shall forward four extra copies of the report through the channels specified.

(1) *Army Contracts*. The report, together with the recommendation of the Head of the Procuring Activity, shall be forwarded through channels to the Labor Advisor, except for reports on Corps of Engineers contracts not involving recommendations of sanctions against the contractor, which will be processed in accordance with the procedure established by the Chief of Engineers.

(2) *Navy Contracts*. On contracts of the Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander of that Command. On contracts of other procuring activities, the report shall be forwarded through channels to the Chief of Naval Material, Attn: Labor Relations Advisor.

(3) *Air Force Contracts*. The report shall be forwarded to the AFLO for review and evaluation. The AFLO shall forward it, with his findings and recommendations, to Hq USAF (LGP, Attn: Labor Relations) for HQ USAF evaluation and final disposition. Reports involving criminal violations shall be referred to the nearest Office of Special Investigations District Officer for review and disposition. |

(4) *Defense Logistics Agency Contracts*. The report shall be forwarded together with the recommendation of the Head of the Procuring Activity to Headquarters, Defense Logistics Agency, Attn: DCAS-H.

(c) Reports processed in accordance with (b) above shall be forwarded with recommendations by the Departmental Headquarters to the Administrator, Wage & Hour & Public Contracts Divisions (WHPC). Except as specifically authorized, the findings, recommendations or conclusions of such reports shall not be disclosed outside of reporting channels. In those cases where there are probable criminal violations, the Department shall forward two copies of the report to the Attorney General for possible prosecution; and the Administrator, WHPC, shall be informed of such action.

18–704.13 *Suspensions of and Deductions From Contract Payments.*

(a) When the contracting officer believes a violation exists, he shall withhold from payments due the contractor an amount equal to the estimated underpayments, as well as any estimated liquidated damages due the United States under the Contract Work Hours Standards Act. If, after investigation, no violations are found, the funds withheld shall be released.

(b) If the investigation reveals violations, a sufficient amount shall continue to be withheld until the contractor makes restitution. When voluntary restitution is not made, the contracting officer, upon submission of his report, shall forward to the appropriate disbursing officer a Standard Form 1093, "Schedule of Withholdings Under the Davis-Bacon Act," listing the name, last known address of each employee involved, the amount due each employee, and a brief statement of the reason for requiring restitution. The form shall indicate whether a report is being forwarded to the Department of Labor. The disbursing officer shall, without waiting for final processing of the report, forward the funds withheld for restitution, together with Standard Form 1093, to the General Accounting Office. Employees to whom restitution is due should be advised to file a claim with the Comptroller General, Claims Division, Washington, D.C. 20548. Such employees may be assisted in the preparation of their claims.

(c) When restitution is not made, because an employee cannot be located, Standard Form 1093 shall so indicate and be submitted by the disbursing officer to the General Accounting Office. The form shall be accompanied with a check payable to the General Accounting Office covering the gross amount of restitution due. In those cases not requiring processing of a report through higher headquarters, the following notation shall be made on the form:

> (*number*) employees were underpaid in the total amount of $.......... The Contractor has voluntarily paid .... employees the sum of $........., but could not locate the following listed employees due restitution. Contractor concurs in the amounts due. Imposition of ineligibility sanctions is not recommended.

(d) When the investigation discloses that liquidated damages are due the United States under the Contract Work Hours Standards Act, and voluntary payment is not made, the funds withheld shall be disposed of in accordance with Departmental procedures.

18–704.14 *Contract Termination Reports*. Whenever a contract is terminated for violation of the labor standards provision, a report shall be submitted by the Department concerned to the Administrator, WHPC, and the Comptroller General. The report shall include the contract number, the contractor's or subcontractor's name and address, the name and address of the contractor or subcontractor who is to complete the work, the number and amount of the latter's contract, and a description of the work thereunder.

18–704.15 *Cooperation With the Department of Labor*.

(a) In connection with the enforcement of labor standards, it is the policy of the Department of Defense to encourage cooperation between representatives of the Departments and the Department of Labor. In cases where investigations are undertaken by representatives of the Department of Labor, appropriate representatives of the Department concerned shall provide reasonable assistance in connection with the inspection of records, interviews with workers, and other aspects of the investigation, and upon appropriate request shall furnish to the Department of Labor pertinent information with respect to contractors, subcontractors, and their contracts, and the nature of the contract work. In cases where an investigation is undertaken by the contracting officer or his representative, the appropriate representatives of the Department of Labor in that Department's regional offices may be requested to provide opinions, advice, or other assistance. In the event communication by a representative of the Department concerned with the national offices of the Department of Labor is necessitated, however, it will be accomplished in accordance with the provisions of 12–101.1(d), rather than through the referenced regional offices.

(b) When a Department of Labor representative undertakes an investigation at a construction project, the officer administering the construction contract or the officer-in-charge shall inquire into the scope of the investigation, and shall request the Department of Labor representative to notify him immediately of any violations of the Davis-Bacon Act, Contract Work Hours Standards Act, or Copeland Act.

18–704.16 *Overtime and Liquidated Damages Under the Contract Work Hours Standards Act*. Under the Contract Work Hours Standards Act, the contractor will be liable to affected employees for underpaid wages and liable to the United States for liquidated damages in the sum of $10 per calendar day for each laborer or mechanic who was not paid overtime wages as required by the Act. Therefore, when violations are found, the amount of overtime and the amount of liquidated damages must be computed in accordance with 12–304. Whenever the sum of liquidated damages is $100 or less, and the violations are found to be nonwillful, or inadvertent, and occurred notwithstanding the exercise of due care by the contractor or his agent, the Secretary or his designee, at a level no lower than the Head of a Procuring Activity, may waive or adjust such liquidated damages. Whenever the liquidated damages exceed $100, the Secretary or his designee, at a level no lower than the Head of a Procuring Activity, may recommend to the Administrator, WHPC, that assessed liquidated damages be waived or adjusted because the violation was nonwillful, or inadvertent, and occurred notwithstanding the exercise of due care.

18–705 Labor Standards Enforcement Report. See 12–107.

18–706 Disposition of Disputes Arising Out of Construction Contract Labor Standards Enforcement. The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include misclassification of workers, hours of work, wage rates and payment, withholding practices, and the application of the labor standards provisions under varying circumstances. For the most part, these are settled administratively at the project level—if necessary, with assistance from the Head of the Procuring Activity, the Department concerned, and the Department of Labor—without reference to the Disputes clause of the construction contract. Disputes arising out of the labor standards provisions of a contract which cannot be settled administratively at the project level shall be subject to the Disputes clause, except for disputes involving the meaning of classifications, wage rates contained in the wage determination decisions of the Secretary of Labor, or the applicability of contract labor provisions. Pursuant to the clause in 7–602.23(a)(ix), these shall be referred to the Secretary of Labor for an opinion, in accordance with procedures of the Department of Labor, with sufficient supporting data to explain both sides of the dispute. This action should be taken under the appropriate section of Subtitle A, Title 29, Code of Federal Regulations, before a contracting officer's decision, which might be affected by such an opinion of the Secretary of Labor, is made pursuant to the Disputes clause. The opinion obtained shall be made a part of the contract file and shall be applied (i) in the investigation of the case, (ii) in the computation of wage underpayments, and (iii) by the contracting officer in reaching his decision pursuant to the Disputes clause. In the event the contractor initiates an appeal before the opinion of the Secretary of Labor is received, the opinion should be obtained promptly and made a part of the appeal file.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 8—Bonds

18–800 Scope of Part. This Part sets forth the requirements for bid guarantees and Miller Act Bonds in construction contracts or subcontracts.

18–801 Bid Guarantees. See 10–102. Where performance and payment bonds are required in the procurement of construction, the invitation for bids or request for proposals shall require bidders to furnish a bid bond or other security (see paragraph 4, Standard Form 22 and 10–202) by the time set for opening of bids.

18–802 Performance Bonds in Connection with Construction Contracts. See 10–103.1. Performance bonds shall be furnished prior to commencement of contract performance.

18–803 Payment Bonds in Connection with Construction Contracts. See 10–103.2. Payment bonds shall be furnished prior to commencement of contract performance.

18–803.1 *Furnishing Information to Subcontractors and Suppliers.* See 10–103.4.

18–804 Default Procedure. See 18–618.

18–805 Consent of Surety. See 10–111.2.

Part 9—Patents, Data, and Copyrights

18-900 Scope of Part. This Part sets forth the policies, instructions, and contract clauses pertaining to patents, data, and copyrights in connection with the procurement of construction and related architect-engineer services. The provisions of Section IX as they relate to supplies are applicable when the procurement is of construction materials or supplies as such, as distinguished from "construction" as defined in 18-101.1. Similarly, the provisions of Section IX as they relate to research and development apply when one of the purposes of the procurement is experimental, developmental or research work, or test and evaluation studies (involving such work) of structures, equipment, processes, or materials for use in construction. When the proposed contract calls for either (i) experimental, developmental, or research work, or (ii) supplies and materials, in addition to either construction or architect-engineer work, the pertinent provisions of Section IX shall be added to the contract pursuant to instructions contained in this Part. In such cases, the contract shall indicate clearly which of the clauses apply only to the experimental, developmental, or research work, or to the supplies and materials being procured, and which apply only to the construction or architect-engineer work. (See 18-910.3.)

18-901 Definitions. For the purpose of this Part, the following terms have the meanings set forth below (see also 9-201).

(a) *Plans and specification for construction* means drawings, specifications, and other data for and preliminary to the construction of a particular public building, structure or work within the definition of construction in 18-101.1.

(b) *Shop drawings for construction* means drawings submitted by the construction contractor, subcontractor, or any lower tier subcontractor pursuant to the construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.* form, fit and attachment details) of materials, or equipment.

(c) *As-built drawings for construction* means drawings submitted by a contractor or subcontractor to show the construction of a particular structure or work as actually completed under the contract.

18-902 Authorization and Consent. See 9-102.

18-902.1 *General.* The Authorization and Consent clause in 7-103.22 shall be included in all contracts for construction materials or supplies and in all construction contracts, except when both complete performance and delivery (if any) are to be accomplished outside the United States, its possessions, or Puerto Rico. Normally, an authorization and consent clause shall not be included in an architect-engineer contract; however, the clause in 7-103.22 shall be included in architect-engineer contracts which require the delivery of models, samples, or other products, or which may require the use of patented devices or processes to test or perform any part of the work, under the architect-engineer contract, except where the contract is to be performed wholly outside the United States, its possessions, or Puerto Rico.

18-902.2 *Authorization and Consent in Contracts Including Research or Development.* Unless prohibited by 18-902.1, the clause required by 9-102.2 shall be included in architect-engineer contracts or construction contracts calling exclusively for experimental, developmental, or research work in the field of construction or architect-engineering. Where the contract calls for either experimental, developmental, or research work or supplies and materials, in addition to either construction or architect-engineer work, the clause in 7–103.22 shall be used.

18–903 Patent Indemnification of Government by Contractor.

18–903.1 *General*. A patent indemnity clause shall not be included in contracts calling solely for architect-engineer or experimental, developmental, or research work in the field of construction.

18–903.2 *Patent Indemnity Clauses in Supply Contracts*. See 9–103. The clause required by 9–103.1 relating to the procurement of supplies are applicable when the procurement is solely for construction materials or supplies as such, as distinguished from "construction" as defined in 18–101.1.

18–903.3 *Patent Indemnity Clause in Construction Contracts*.

(a) Except where complete performance is to be accomplished outside the United States, its possessions, and Puerto Rico, all contracts in excess of $10,000 calling for "construction" as defined in 18–101.1 shall contain the clause in 7–602.16(a) (see Standard Form 23–A).

(b) If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods which are nonstandard, noncommercial or special, the contract may list them in the specifications and may expressly exclude them from the patent indemnification by inserting in the contract the clause in 7–602.16(b).

18–903.4 *Waiver of Indemnity by the Government*. Exemption of specific patents from the patent indemnity provisions of the clauses prescribed in 18–903.2 and 18–903.3(a) shall be made only upon the authorization of the Secretary concerned or his authorized representative in accordance with 9–103.4.

18–904 Notice and Assistance. Subject to the prohibitions of 9–104, all contracts calling for construction work shall include the Notice and Assistance Regarding Patent and Copyright Infringement clause in 7–103.23.

18–905 Approval of Restricted Designs. Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment or processes which will meet objective Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment or processes which are available only from a sole source. In such event the architect-engineer should report to the contracting officer the items known to him to be sole source, and the reasons therefore, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole source items, or where appropriate, to consider alternate items. It is to be emphasized that this procedure is not intended to restrict the use of patented, or copyrighted items, but is merely to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements, to a single sole item. The procedure is primarily for use in instances where the proposed design is expected to be conventional or standard and where the design may be used in subsequent procurements. For this purpose, the clause in 7-608.13 may be inserted in architect-engineer contracts.

18-906 Processing of Infringement Claims. See Section IX, Part 4.

18-907 Classified Contracts. See 9-106.

18-908 Patent Rights.

(a) Any construction or architect-engineer contract which calls for or can be expected to involve the design, for use in the construction or operation of a Government facility, of novel structures, machines, products, materials, processes, or equipment (including construction equipment), and any contract having as one of its purposes the performance of experimental, developmental, or research work or test and evaluation studies involving such work, should include a patent rights clause in accordance with the policy and guidance of 9-701 .

(b) Any construction or architect-engineer contract which calls for or can be expected to involve only standard types of construction to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term "standard types of construction" as used herein means construction in which the distinctive features, if any, in all likelihood will amount to no more than:

(i) variations in size, shape or capacity of otherwise structurally orthodox and conventionally acting single structural members or multi-member structural groupings; or

(ii) purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for protection under the design patent or copyright laws.

Rights of the Government in and to any such distinctive design or copyright features, as distinguished from inventions of a mechanical or functional nature resulting from an architect-engineer contract or from a contract for construction involving architect-engineer services are provided for in the clause in 7-607.7(b) or in 7-603.42(a)(2) entitled "*Drawings and Other Data to Become Property of Government.*"

(c) Construction and architect-engineer contracts which require the development of novel structures, machines, products, equipment (including construction equipment), materials or processes shall include the clause in 7-603.42(a)(2) or 7-607.7(b) in addition to the appropriate "*Patent Rights*" clause prescribed by Section IX.

18-909 Patent Royalties. The provisions of 9-110, 9-111, and 9-112 are applicable to contracts for construction or construction supplies.

18-910 Acquisition and Use of Plans, Specifications and Drawings.

18-910.1 *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts.*

(a) *Plans and Specifications and As-Built Drawings.*

(1) Except as provided in (2) below, insert the "*Government Rights (Unlimited)*" clause in 7-607.7(a) in contracts calling for architect-engineer services or in 7-603.42(a)(1) in contracts for construction involving architect-engineer services.

(2) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, esthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the "*Drawings and Other Data to Become Property of Government*" clause shall be used. If the contract is for architect-engineer services, the "*Government Rights* (*Unlimited*)" clause on Standard Form 253 (7–607.7(a)) shall be deleted and the clause in 7–607.7(b) substituted therefor. If the contract is for construction involving architect-engineer services, the clause in 7–603.42(a)(2) shall be included.

(b) *Shop Drawings for Construction*. In procuring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in contracts calling for delivery of such drawings, insert the clause in 7–602.47.

18–910.2 *Data Clauses for Construction Supplies and Research and Development*. The provisions of Section IX, Part 2, relating to the acquisition of data and rights therein in connection with the procurement of supplies and materials and research and development are applicable where the procurement is confined to either construction supplies and materials (as distinguished from "construction" as defined in 18–101.1) or experimental, developmental, or research work, or both. In some circumstances the right to use such data, including drawings, may be limited in accordance with appropriate paragraphs of Section IX, Part 2.

18–910.3 *Mixed Contracts*. Where the proposed contract calls for either (i) experimental, developmental, or research work, (ii) supplies and materials, or (iii) both, in addition to either construction or architect-engineer work, the pertinent clauses prescribed by Section IX, Part 2, shall be included in the contract, in addition to the appropriate clause or clauses prescribed by 18–910.1. In such cases, the contract shall indicate clearly that the clauses prescribed by Section IX, Part 2, apply only to the experimental, developmental, or research work, or only to the supplies and materials being procured, or to both, and that the appropriate clause or clauses prescribed by 18–910.1 apply only to the construction or architect-engineer work.

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Part 10—Taxes

18-1001 Federal Excise Taxes. Various provisions of the Internal Revenue Code of 1954 (26 U.S.C.) either provide for refunds or credits for taxes paid or specifically exclude construction equipment from the application of taxes levied, where the item is neither registered for nor employed or used on highways.

18-1001.1 *Special Fuels*. See 11-101.

18-1001.2 *Motor Vehicles*. See 11-102.1.

18-1001.3 *Tires and Tubes*. See 11-102.2.

18-1001.4 *Gasoline*. See 11-102.3.

SECTION XIX—TRANSPORTATION

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SECTION XIX

TRANSPORTATION

19-000 Scope of Section. This Section prescribes policies and procedures for the application of transportation and traffic management considerations in the procurement of supplies. In general, the terms and conditions contained in this Section are applicable to fixed-price contracts; however, if a special requirement exists for application of any of these terms and conditions to other types of contracts (*e.g.*, cost-reimbursement type contracts) for which transportation arrangements are normally the responsibility of the contractor and transportation costs are allowable (see 15-205.45), the terms and conditions herein shall be used as a guide for both contract coverage of transportation and contracting officer instructions to the contractor to minimize the ultimate transportation costs to the Government. In this Section "Continental United States" or "CONUS" means the 48 contiguous states and the District of Columbia. The term "United States" is used as defined in 1-201.20.

TRANSPORTATION

Part 1—Introduction

19-100 General. Transportation and traffic management factors are important in awarding and administering contracts to assure that procurements are made on the basis most advantageous to the Government, all factors considered, and that supplies arrive on time, at the required place, in good condition. The requiring activity shall consider all transportation factors before submitting a purchase request and shall provide the purchasing office with complete information and instructions so that the contracting officer is made aware of and can evaluate all applicable traffic management factors. The requiring activity must consider, to the extent known or ascertainable, present and future requirements, positioning of supplies, and subsequent distribution; the information provided the purchasing office should reflect clearly only the pertinent transportation factors applicable to the particular procurement.

19-101 Military Standard Transportation and Movement Procedures (MILSTAMP).

19-101.1 *General*. The DoD Regulation 4500.32-R (MILSTAMP) establishes uniform procedures and documents for the generation, documentation, communication and use of transportation information, thus providing the capability for control of shipments moving in the Department of Defense transportation system. The procedures established by the MILSTAMP Regulation are mandatory upon all agencies shipping material or arranging for the procurement and shipment of supplies by Government contractors, through the use of military controlled transport, or through military transshipment facilities as defined in that Regulation.

19-101.2 *Responsibilities*. Procuring activities are responsible for assuring that the requirements of the MILSTAMP Regulation are included in appropriate contracts for all applicable shipments and for enforcing such requirements with regard to shipments under their cognizance. This includes requirements relating to documentation, marking, advance notification of shipment dates, and terminal clearances. MILSTAMP has been implemented on a world-wide basis. Specific responsibilities are assigned in that Regulation to contract administration offices listed in the DoD Directory of Contract Administration Services Components, DoD 4105.59-H, for movement control and documentation with respect to shipments from contractors (and subcontractors) which are to move via the Department of Defense transportation system. Contractual documents shall therefore designate the contract administration office having cognizance of the contractor (see DoD 4105.59-H), as the contact point to which the contractor will provide necessary information to effect MILSTAMP documentation and movement control including air or water terminal shipment clearances and to obtain data necessary for shipment marking and freight routing. Contractual documents shall specify that the contractor shall not ship directly to a military air or water port terminal without authorization from the designated contract administration office.

19-102 Sources of Transportation Assistance. Traffic management advice and assistance and all necessary transportation factors, such as freight rates, transportation costs, transit arrangements, time in transit, port capabilities, and other related information required up to the time of award for the solicitation and award, shall be obtained from the transportation office of the purchasing activity, unless another military activity has been designated as responsible for furnishing such assistance, guidance, or data (see 16-820).

19-103 Responsibilities of the Contracting Officer. The contracting officer shall obtain traffic management advice, assistance, and transportation factors required for solicitations and awards, and the administration, modification, and termination of contracts, including the movement of property by the Government to and from contractors' plants. This is especially important before making an initial procurement of unusually large, heavy, high, wide, or long supplies, or those with sensitive or dangerous characteristics, or commodities lending themselves to containerized movements from the source. Additional costs arising from factors such as the use of special equipment, excess blocking and bracing material, circuitous routing, etc., incident to shipment of such supplies shall also be considered, in conjunction with the freight rate, in determining total transportation costs. See 19-217 for special freight rates for transportation of supplies.

19-104 FOB Point. See 19-208 for solicitation provisions.

19-104.1 *General.*

(a) Transportation of supplies from sources within the continental United States shall be in accordance with the policies stated in this paragraph 19-104, except where identifiable costs, nature of the supplies (security, safety or value), delivery requirements (premium modes of transport, escorts, transit arrangements, and tentative conditions), or other advantages, limitations, or requirements dictate otherwise.

(b) Justification for the solicitation of bids or proposals other than on the f.o.b. basis prescribed in this paragraph 19-104 shall be documented in the contract file (see 1-308).

(c) The place of performance of Government procurement quality assurance actions and place of acceptance shall not control the transportation term, except that where acceptance is at destination, transportation shall be f.o.b. destination (see 19-104.2(d)(2). The fact that transportation is to be f.o.b. destination does not alone necessitate changing the place of acceptance from origin to destination; and the fact that acceptance is at origin does not necessitate an f.o.b. origin transportation term. Providing for inspection and acceptance at origin (when appropriate under Section XIV), in conjunction with an f.o.b. destination transportation term, may be advantageous to both the Government and the contractor. Acceptance of title at origin by the Government permits payment of the contractor, *provided* his invoice is supported either by a copy of the signed commercial bill of lading (indicating the carrier's receipt of the supplies covered by the invoice for transportation to the particular destination specified in the contract) or by other appropriate evidence of shipment to the particular destination for the contractor's account. See 14-306(a).

19-104.2 *Determination of FOB Terms of Procurement of Items Originating in the Continental United States.*

(a) Determination of f.o.b. terms will be made generally on the basis of overall costs, with due consideration of the criteria specified in (c) and (d) below.

(b) Solicitations shall specify whether offerors must submit offers on (i) or (ii) below or both, or may allow offerors to choose the basis on which they will make an offer. (See 19-208.) Procurement shall be on the basis of whichever of the following is more advantageous to the Government:

- (i) f.o.b. carrier's equipment, wharf, or freight station (at the Government's option) at a specified city or shipping point at or near contractor's plant (f.o.b. origin); or
- (ii) f.o.b. destination. (When the supplies are destined for ultimate delivery overseas, the destination shall be a CONUS port area or temporary storage or holding area (see 19-213).)

(c) (1) In determining whether f.o.b. origin or destination is more advantageous to the Government, consideration should be given to the fact that economies in transportation within the United States are often available when contracts are awarded on an f.o.b. origin basis due to lower freight rates available to the Government. F.o.b. origin contracts also present other traffic management features, in that they:

- (i) permit utilization of transit privileges (see 19-206);
- (ii) are suitable when destinations are tentative or unknown in which case the solicitation shall be f.o.b. origin only (see 19-208.4);
- (iii) permit diversions to new destinations without price adjustment for transportation (see 19-215);
- (iv) facilitate use of special routings or types of equipment (see 19-207);
- (v) facilitate, when necessary, use of premium cost transportation and permit Government controlled transportation;
- (vi) make possible negotiation for reduced freight rates (see 19-402); and
- (vii) permit utilization of the small shipment consolidation stations when this method is advantageous to the Government.

(2) Generally, procurements with a security classification of confidential or higher shall be purchased f.o.b. origin when the size, bulk, or quantity to be transported will require the employment of commercial transportation services. When required, routing instructions, as well as advice and assistance relative to the particular mode of transportation to be employed, shall be obtained from the appropriate Area Command of the Military Traffic Management Command.

(d) (1) On the other hand, f.o.b. destination is more advantageous under certain circumstances. The following are examples of situations when f.o.b. destination is normally more advantageous and the solicitation shall normally be on an f.o.b. destination only basis (see 19-208.3):

- (i) in the case of bulk supplies, such as coal, which require other than Government-owned or operated handling, storage, and loading facilities, and shipment is destined outside the continental United States;
- (ii) when the supplies consist of steel, or other bulk construction products, for shipment destined outside the continental United States;
- (iii) when the supplies consist of forest products, such as lumber;

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(iv) when the supplies consist of perishable subsistence or medical supplies subject to in-transit deterioration; and

(v) when evaluation of offers on an f.o.b. origin basis is anticipated to result in increased administrative lead time or administrative costs which outweigh the potential advantages of an f.o.b. origin determination.

(2) When acceptance must be at destination, the solicitation shall be on an f.o.b. destination only basis.

Part 2—Planning and Solicitation

19-200 Scope of Part. This Part covers the period from receipt of the purchase request to the issuance of the solicitation.

19-201 Quantity Analysis. To the extent feasible, the requiring activity shall schedule its requirements to take full advantage of the savings in transportation costs to be realized from the purchase of carload or truckload quantities.

19-202 Commodity Description—Freight Classification.

(a) Generally, the freight rate for supplies is based upon the rating applicable to the freight classification description published in tariffs filed with Federal and State regulatory bodies. Therefore, a complete description of the commodity to be procured and of required packing and packaging is necessary to determine proper transportation charges for the evaluation of f.o.b. origin bids or proposals for shipments moving under Government bills of lading. When supplies cannot be properly classified through reference to freight classification tariffs or when doubt exists, the applicable freight classification shall be secured from the appropriate area headquarters of the Military Traffic Management Command through the transportation office supporting the purchasing office.

(b) When the item being procured is known to be new to the supply system, nonstandard, or a modification of previously shipped items such that a different freight classification may apply (*e.g.*, contain different materials, ingredients, changed weight, cube, configuration, etc.), the "*Freight Classification Description*" provision in 7-2003.17 shall be included in a solicitation which will or which may result in an f.o.b. origin contract, since prospective contractors may have established an official freight classification description which can be applied to it and which may result in lower transportation costs to the Government.

(c) Explosives and other dangerous supplies must be adequately described in the solicitation for both safety and transportation purposes. The description shall show the Department of Transportation shipping name and classification (see Title 49, Code of Federal Regulations, Parts 170-189), the freight classification, military explosive class, and other data necessary for proper identification of the material.

(d) In f.o.b. origin contracts when transportation costs have been considered in the offer/evaluation process, the PCO shall furnish the freight classification information developed in accordance with (a), (b) and (c) above to the CAO. (See AR 55-355/NAVSUP 444 (REV)/AFM 75-2/MCO P4600. 14A/DSAR 4500.3.) This information will be in the format shown below.

NOTICE TO TRANSPORTATION OFFICER OF THE CAO

The commodity descriptions used in the evaluation of freight costs for this award are:
(*List applicable commodity descriptions for each contract line item.*)

Examples:

CLIN 1. *Motor* —Electrical Instruments, NOI, NMFC 61700
Rail —Electrical Instruments, NOIBN, UFC 34580
CLIN 2. *Motor* —Aircraft Wings, NMFC 11760
Rail —Aircraft Wings, UFC 4705

19-203 Packaging, Packing, Preservation and Marking Requirements. See 1-1204.

19-204 Consignment and Marking Instructions.

(a) (1) Complete consignment and marking instructions, to the extent that they are known at the time the contract is awarded, shall be included in contracts to assist in insuring that supplies will be delivered to proper destinations without delay (see 16-821). When complete consignment information is not initially known, additional instructions or amendments thereto shall be furnished by the procuring contracting officer as soon as such information becomes known, using Standard Form 30. Consignment instructions shall include, as a minimum, the clear text and coded MILSTRIP data as follows:

- (i) Department of Defense Activity Address Directory (DODAAD), Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38-D or H8-1 / H8-2 code of consignee and clear text identification of consignee and destination;
- (ii) project code, when applicable;
- (iii) transportation priority (TP);
- (iv) required delivery date (RDD); and
- (v) coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

Non-MILSTRIP shipments shall include data similar to (i) through (iv) above, and the applicable portion of (v) above, together with the notation "Non-MILSTRIP."

(2) In addition to the data requirements of (i) through (v) of (1) above, amended shipping instructions shall include the following when appropriate:

- (i) name of the activity originally designated, from which the stated quantities are to be deducted; and
- (ii) any other features of the amended instructions not contained in the basic contract.

(b)(1) When necessary to meet required delivery schedules, instructions may be issued by telephone, teletype or telegram *provided* that such instructions shall be confirmed by a Standard Form 30 for each contract. For contracts assigned for any contract administration function listed in 1-406 to any office listed in DoD 4105.59-H, DoD Directory of Contract Administration Services Components, such instructions shall include the modification serial number and, if a new line item is created by the issuance of shipping instructions, the new line item number and the existing line item number if affected.

(2) Confirming delivery instructions shall be stamped or marked "CONFIRMATION" in block letters and shall specify in detail those instructions being confirmed.

(3) Confirming delivery instructions shall contain no changes to the instructions being confirmed. The confirming Standard Form 30 shall be processed as follows:

(*a*) for contracts assigned for any contract administration function listed in 1-406 to any office listed in DoD 4105.59-H—within five working days;

(*b*) other contracts—

- (i) Telephone—within five working days; and
- (ii) Teletype or telegram—consolidate on a monthly basis.

(c) Marking instructions shall conform to the provisions of the current issue of MIL-STD-129 (Military Standard Marking for Shipment and Storage).

(d) For diversions of petroleum, oil and lubricant (POL) products overseas to new destinations, instructions issued by an office other than that issuing the contract or delivery order and issued by telephone, teletype or telegram are exempted from the requirement in (b)(1) above to include the modification serial number and the new line item number in such instructions and from the time requirements in (b)(3) above for issuing of the confirming Standard Form 30. Each confirming Standard Form 30 shall be issued within 30 days of the instructions being confirmed.

19-205 Delivery of Government-Furnished Property. See 7-104.69. When Government property is to be furnished under a contract and transportation costs will be a factor in the evaluation of bids or proposals, the solicitation should include a clear description of the property involved and its location, if known. When the property is explosive or otherwise dangerous, it should also be described according to the regular freight classification and the applicable shipping name and classification given in the Interstate Commerce Commission Regulations. Other data should be furnished if pertinent to inform prospective contractors of all transportation factors necessary for intelligent preparation of estimates.

19-206 Transit Arrangements.

(a) Transit arrangements permit the stopping of a carload or truckload shipment at a specific intermediate point en route to the final destination in order to store, process or fabricate, or accomplish other purposes, as specified in carrier's tariffs or rate tenders. A single through rate is charged from origin to final destination, plus a transit or other related charge, if applicable, in lieu of a combination of rates to and from the transit point which would result in higher costs. Consideration shall be given to possible benefits to the Government through the use of such transit arrangements. Since f.o.b. destination bidders or offerors can quote only fixed overall delivered prices to the Government at first destination, solicitations incorporating transit arrangements shall be restricted to f.o.b. origin bids or proposals (see 19-104.2(c)(1)(i) and 19-208.2). Traffic management personnel shall furnish necessary information and analyses of situations in which transit arrangements may be beneficial. When transit arrangements will apply, an appropriate provision shall be incorporated in the solicitation and become a factor in the evaluation of bids or proposals. The Government's first and ultimate destination(s) shall both be set forth in the solicitation so that bidders (offerors) will know the evaluation factors. The quantity to be awarded must be of sufficient tonnage to assure that carload shipments can be made by the contractor, and there should be reasonable certainty that shipments out of the transit point will be requisitioned in carload/truckload quantities (transit privileges for truck movement are rare). When a requirement exists for transit arrangements within the continental United States, the solicitation shall include the "*Transit Arrangements*" provision in 7-2003.23(c).

(b) When only f.o.b. origin bids (offers) (see 19-104.2 and 19-208) are to be solicited for appropriate quantities of supplies of the type which normally vendors have in process or storage, bidders (offerors) should be permitted to offer their earned (recorded with a carrier) commercial transit credits which are available and can be transferred to the Government during the scheduled delivery period. A transit credit represents the transportation cost for a recorded tonnage from an initial shipping point to an intermediate destination (*e.g.*, bidder's plant or shipping point) for storage, processing or other purpose. Upon reshipment to the Government destination, the remaining freight cost between the contractor's initial point and the destination points in the schedule may be lower than the cost of treating the tonnage as a new shipment. Actual lower costs which can be realized by the Government through utilization of such transit credits shall be used in bid evaluation. Even though there may be Government acceptance at origin, shipments to which transit credits apply will be required to be made on prepaid commercial bills of lading, *provided* that this does not preclude a proper change in delivery terms pursuant to the Changes clause. Normally, when transit credits apply, the contract, although f.o.b. origin, will require the contractor to pay the transportation charges on shipments to which the transit credits apply subject to reimbursement by the Government (total freight costs from bidder's original source for the supplies, via his plant to the Government destination, less the amount previously paid for transportation to his plant, plus the usual transit privilege charge). Such shipments move for the account of and at the risk of the Government, and become Government property upon Government acceptance at origin. The contractor shall show the transportation and transit charges as a separate amount on the invoice for each individual transited shipment. The amount reimbursed by the Government shall not exceed the amount quoted in the bid (offer and used for evaluation). Each such invoice shall be supported by the carrier's receipt indicating that total freight charges have been or will be paid by the contractor. When supplies are of such nature, or it is the custom of the trade that bidders may have potential transit credits available, the "*Transportation Transit Privilege Credits*" provision in 7-2003.18 shall be included in the solicitation.

19-207 Mode of Transportation. Generally, solicitations shall not specify a particular method or mode of transportation or a particular carrier for delivery of supplies. When special types of transportation equipment or limited facilities for delivery and receipt of supplies at destination permit the use of only one mode of transportation, such special delivery requirements may, after referral to the appropriate transportation office, be the basis for:

(i) controlling the method or mode of transportation by specifying only f.o.b. origin as the place of delivery, or

(ii) specifying the special delivery requirements in f.o.b. destination procurements (see 19-211).

19-208 Solicitation Provisions Covering FOB Point.

19-208.1 *General.*

(a) Solicitations in which bids or offers may be submitted both f.o.b. origin or f.o.b. destination in accordance with 19-104.2(b), shall include so much of the information required by 19-208.2, 19-208.3 and 19-211 as is pertinent to the particular procurement. They shall provide that bids or proposals may be submitted on either or both bases and they will be evaluated on the basis of the lowest overall cost to the Government.

(b) The "*Evaluation of Export Bids (or Proposals)*" provision in 7-2003.20 shall be included in the solicitation when the supplies are to be purchased in accordance with 19-213.1 for ultimate delivery to known destinations outside the United States, and it has been determined that other ports, in addition to a primary port, can be used.

19-208.2 *FOB Origin.*

(a) Whenever the supplies will or may be delivered f.o.b. origin, the clauses in 7-104.70 and 7-104.85 shall be included in the contract. Generally, solicitations for supplies which will or may be purchased f.o.b. origin shall provide for delivery in carload or truckload lots (see 19-209) f.o.b. carrier's equipment, wharf, or freight station (as specified by the Government), at a city or shipping point to be specified by the bidder or offeror. This will enable the military traffic management offices, when issuing routing instructions, to select the mode of transportation which will provide the required service at the lowest overall cost. When f.o.b. origin bids (offers) only are desired, the solicitation shall specify that any bids (offers) submitted on any other basis shall be rejected as nonresponsive.

(b) Solicitations which include the clause in 7-104.70 may include the "*F.O.B. Origin (th Differentials*)" provision in 7-2003.19 when it is believed that a prospective contractor is likely to include in his f.o.b. origin price a contingency to compensate for what may be for him an unfavorable routing condition which the Government has the option to specify at the time of shipment. Such routing condition (*e.g.*, delivery to rail car, wharf, etc.) due to the location of the prospective contractor's plant, lack of rail siding, etc., impose on him a substantial expense above his "at plant" or "commercial shipping point" price. Accordingly, the provision in 7-2003.19 is intended to permit prospective contractors to state in bids or offers a reimbursable differential which represents their cost of bringing the supplies to any f.o.b. origin place of delivery specified at the time of shipment by the Government. The provision is appropriate if:

(i) the loading nature of the supplies, such as wheeled vehicles, and/or the different methods of shipment specified by the Government; *i.e.*, towaway, driveaway, tri-level vehicle, rail car, etc., may increase the contractor's cost in varying amounts for bringing the supplies to, or loading and bracing the supplies at, the specified place of delivery;

(ii) the contractor's f.o.b. origin shipping point is a port city served by United States inland, coastwise or intercoastal water transportation, and additional costs would be incurred by the contractor to make delivery f.o.b. a wharf in such city to accommodate water routing specified by the Government; or

(iii) the contractor's plant does not have a private rail siding and to ship by Government specified rail routing, the contractor would be required to deliver the supplies to a public siding or freight terminal, and to load, brace, and install dunnage in rail cars.

(c) Land methods of transportation by regulated common carrier are the normal means of transportation used by the Government between points in the continental United States. Accordingly, the "*Evaluation—F.O.B. Origin*" provision in 7-2003.23 shall be included in f.o.b. origin solicitation to establish the means the Government will use in applying transportation costs for evaluation. However, when it is appropriate to use other methods of transportation in evaluating bids or proposals, *e.g.*, air, pipeline, seavan container, or barge and ocean tanker for bulk commodities, the provision may be modified accordingly.

19-208.3 *FOB Destination.*

(a) When the supplies will or may be purchased f.o.b. destination (see 19-104.2(d)), the clause in 7-104.71 shall be included in the contract. When only f.o.b. destination bids or proposals are desired, the solicitation shall specify that bids or offers submitted on a basis other than f.o.b. destination will be rejected as nonresponsive. When the supplies will or may be purchased f.o.b. destination and inspection and acceptance will be at origin, the contract shall also include the clause in 7-104.76.

(b) When procurement is on an f.o.b. destination basis, special care shall be taken to observe the requirements of 14-305.3 as to place of inspection; also see 14-306 and 14-307 as to place of acceptance.

19-208.4 *Destination Unknown.*

(a) When the exact destination of the supplies to be purchased is not known, but the general location of the expected users can be reasonably established, the purchase request shall designate a place or places as the tentative point(s) to which transportation costs will be computed, stating estimated quantities for each tentative destination. The solicitation shall provide that bids or proposals shall be submitted f.o.b. origin only (see 19-104.2(c)(1)(ii)) and that shipment shall be made on Government bills of lading. The clause contained in 7-104.70 and the "*Destination Unknown*" and the "*F.O.B. Origin — Carload and Truckload Shipments*" provisions in 7-2003.24(a) and (b) shall be included to:

- (i) establish that destinations are tentative and only for the purpose of evaluating bids or proposals;
- (ii) establish that bids (offers) will be solicited on basis of f.o.b. origin only; and
- (iii) control subsequent shipping weights.

(b) When the purchasing office and the requesting activity determine that it is impracticable to estimate any tentative or general delivery points for the purpose of evaluating transportation costs, proposals shall be solicited f.o.b. origin only (see 19-104.2(c)(1)(ii)) and evaluation will be made without regard for transportation costs. In such cases, insert the provision in 7-2003.70 in the solicitation.

The contract file shall be documented with justification for such solicitation provision and this paragraph shall be cited. The clauses in 7-104.70 and 7-104.72 shall be included in the contract.

19-209 Required Shipping Weights. Solicitations which may result in f.o.b. origin contracts shall include the "*F.O.B. Origin — Carload and truckload Shipments*" provision in 7-2003.24(b). This will provide agreement as to appropriate freight costs for evaluation of bids or proposals, and assure that contractors produce economical shipments of agreed size (see 19-208.2(a)).

19-210 Guaranteed Shipping Weights and Dimensions. When shipping weights and dimensions are required to evaluate offers as to transportation costs, the "*Guaranteed Maximum Shipping Weights and Dimensions*" provision in 7-2003.16 shall be included in the solicitation.

19-211 Transportation Responsibilities of Contractors.

(a) The clause in 7-104.73 shall be included in contracts for supplies which may be shipped in carload lots by rail. The clause specifies that carload shipments shall be loaded, blocked and braced by the contractor in accordance with standards published by the Association of American Railroads.

(b) If the nature of the supplies or safety, environmental, or transportability factors require special methods for securing the supplies on the carrier's equipment, or only a special mode of transportation or type vehicle is appropriate (see 19-103), the solicitation shall set forth such detailed methods.

19-212 Shipping Point(s) Used in Evaluation of FOB Origin Bids. The "*Shipping Point(s) Used in Evaluation of F.O.B. Origin Bids (Or Proposals)*" provision in 7-2003.24(c) shall be included in solicitations which may result in f.o.b. origin contracts to assure application of appropriate freight costs in evaluating bids or proposals. This provision should be supported by an additional provision as part of the solicitation, to require prospective contractors to specify the location of their actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government in accordance with the contract's f.o.b. origin terms. To assure appropriate rail routing for shipments from or to the contractor's shipping point, each prospective contractor shall also be required to specify whether his shipping point has a private railroad siding and the name of the rail carrier serving it. When the shipping point does not have a private siding, the name and address of the nearest public rail siding and carrier serving it shall be specified.

19-213 Shipments to Ports.

19-213.1 *Solicitation/Contract Provisions.*

(a) When supplies are for known destinations outside the continental United States, the CONUS port of loading or point of exit (aerial or water) and the Water Port of Debarkation which serves the overseas destination shall be listed in the solicitation for transportation evaluation purposes.

(b) When a contract will not generate any shipment for which an Export Release is required (less than 10,000 lbs., etc.; see paragraph 202024 of the Military Traffic Management Regulation (AR 55-355, NAVSUP Pub 444, MCO 4600.14, DSAR 4500.3), hereafter referred to as MTMR), only the CONUS ports which serve the overseas destination shall be listed in the solicitation (see DoD Regulation 4500.32-R, Appendix G).

(c) Except for contracts to which (b) above applies, other CONUS ports which meet the eligibility criteria compatible with the nature and quantity of the supplies, their destination, type of carrier required, and specified overseas delivery dates also may be listed in the solicitation for evaluation purposes. This will permit bidders or offerors, who are geographically remote from the port which normally serves the overseas destination, to be competitive as far as transportation costs are concerned. Ports of loading to be included in the solicitation may be determined through coordination with the headquarters of the Military Traffic Management Command serving the area in which the purchasing office is located.

(d) Unless logistics requirements limit the ports of loading to those ports listed in the solicitation, the solicitation shall provide that the bidder or offeror may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to his shipping point, and that these ports shall be considered in the evaluation of bids or proposals; *provided*, however, that these ports must possess all requisite capabilities of the listed ports in relation to the supplies being procured. Under these circumstances, the "*Evaluation of Export Bids (Or*

Proposals)" provision in 7-2003.20 shall be included in the solicitation. When a solicitation provides for bids or offers on the basis of f.o.b. origin only, as described in paragraph B of this provision, paragraph C and the last sentence of paragraph E shall be deleted. When a solicitation provides for bids or offers on the basis of f.o.b. destination only, as described in paragraph C of the same provision, the following shall be deleted: paragraph B, the opening phrase in paragraph C(2) "Unless bids . . . (see B above)" and the first and third blocks pertaining to origin at the end of paragraph E.

(e) The award shall specify the United States port(s) of loading which afford the lowest overall cost to the overseas destination.

19-213.2 *Military Standard Transportation Movement Procedures (MILSTAMP) Documentation and Export Releases.* A transportation Control Movement Document (TCMD) must be dispatched to the appropriate air or water clearance authority in accordance with MILSTAMP procedures, for all shipments consigned to either air or water terminal transshipment points. Additionally, an Export Release must be obtained for certain categories of supplies to be transshipped via a water port of loading to overseas destination (see 19-213.1 and 16-823). MILSTAMP procedures are designed to be compatible with Export Release procedures for controlling the movement of cargo via water and air terminals. To assure control of export traffic, the clause in 7-104.74 shall be included in contracts calling for shipments consigned to either air or water terminal transshipment points.

19-214 Place of Delivery for Shipments Originating Outside the United States. It is the policy of the Department of Defense, in furtherance of the Cargo Preference Act (46 U.S.C. 1241), to encourage and foster the American Merchant Marine. When transportation of supplies by ocean vessel will be required (see Section I, Part 14) and in the absence of specific instructions from the requiring activity, the place of delivery for shipments originating outside the United States shall be based on the known availability of United States flag vessels between the points involved.

19-215 Diversions Affecting FOB Destination Transportation Costs. To provide the measure for adjustment of shipping costs if the contracting officer directs a change in the place of delivery on f.o.b. destination contracts, the contract shall include the clause in 7-104.75.

19-216 Scheduling of Deliveries To Permit Consolidation of Shipments. The accumulation of small shipments into carload or truckload lots will result in lower transportation costs. Also, the accumulation of small shipments into less than load shipments may result in lower transportation costs. Upon review of the purchase request and in conjunction with the requiring or requisitioning activity, consideration shall be given to revising delivery schedules to provide for deliveries in larger quantities. When feasible, delivery schedules for supplies to be delivered to multiple destinations should be consolidated and the stopoff (in transit) privilege permitted under carrier's tariffs used for partial unloading at one or more points directly en route between the point of origin and the last destination.

19-217 Special Freight Rates for Transportation of Supplies. Part I of the Interstate Commerce Act makes unlawful all unjust discrimination and also prohibits the direct or indirect charging, demanding or receiving, for any service, greater or less compensation from any person than any other for a like and contemporaneous service. However, Section 10721 of the Revised Interstate Commerce Act permits common carriers subject to the Act to provide for the carriage, storage, or handling of property free or at reduced rates when the services are provided for the United States, State or municipal Governments, and other specified organizations. Accordingly, Section 10721 allows a surface carrier to offer preferential rates to the United States for the movement of property. These rates are popularly known as Section 10721 rates.

19-217.1 *Applicability of Section 10721 Rates*. Section 10721 rates are not applicable to shipments under a fixed-price f.o.b. destination contract. Such rates are published in Government rate tenders and apply on shipments moving on Government bills of lading or on commercial bills of lading endorsed to show that such bills of lading are to be exchanged for or converted to Government bills of lading at destination after delivery to the consignee; however, for such benefits to accrue to the Government on shipments moving on other commercial bills of lading, it becomes necessary to establish that the Government pays the total transportation charges or directly and completely reimburses the party which initially bears the freight charges.

(a) In fixed-price f.o.b. origin contracts, the Government may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor would be reimbursed for the direct and actual transportation cost as a separate item in the invoice (see 19-403.2). To insure that the Government, in this type of arrangement, obtains the benefit of Section 10721 rates, when they exist, the clause in 7-103.25 shall be included in the contract.

(b) The Section 10721 preferential rates are applicable to shipments moving on commercial bills of lading under cost-type contracts, when the transportation costs are direct and allowable costs under the cost principles of Section XV. To insure that the Government receives the benefit of lower Section 10721 rates, when they exist, the clause in 7-203.14 shall be included in cost-type contracts.

(c) Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, Section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and Section 10721 rates will not apply.

Part 3—Evaluation of Bids and Proposals

19-301 Transportation Rates and Related Costs To Be Used.

19-301.1 *General.*

(a) To afford proper analysis and consideration of transportation factors, the contracting officer shall consider transportation rates and related costs in the evaluation of f.o.b. origin bids and proposals. The best available transportation rates and related costs in effect or to become effective prior to the expected date of initial shipment and on file or published at the date of the bid opening, shall be used in the evaluation. However, when transportation rates and related costs which cover the traffic are filed or published after the bid opening or proposal due date and there were no applicable rates or costs in existence on that date, these rates and costs shall be so identified by the area headquarters of Military Traffic Management Command (MTMC) or the Military Sealift Command (see 19-301.2) and shall be used in the evaluation (see 16-822).

(b) When Government property is to be furnished and shipped by the Government under a contract to a point specified by the prospective supplier in his bid or proposal, transportation costs shall be a cost factor in the evaluation of bids, or proposals.

19-301.2 *Sources of Transportation Rates and Related Costs.*

(a) Land and air rates; inland, coastwise, and intercoastal water rates; ocean rates and costs, including seavan container rates and costs; port handling charges; and related information pertaining to supplies moving to or from either overseas points or points within the continental United States shall be obtained from the appropriate area headquarters of MTMC by the transportation or traffic management office which supports the contracting officer. However, rates and costs applicable to shipments of bulk petroleum via ocean tanker transportation should be obtained from the Military Sealift Command.

(b) Rates and related costs for all supplies to be shipped between points outside of the continental United States, including Alaska and Hawaii, shall be obtained from the Headquarters of the Military Service which sponsors the cargo. Requests should be directed as follows:

Army	Deputy Chief of Staff for Logistics, Department of the Army, ATTN: LOG/MM-SSB, Washington, D. C. 20310.
Navy	Naval Supply Systems Command, Code 05, Washington, D. C. 20390.
Air Force	Applicable overseas Air Force Command.
Marine Corps	Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, D. C. 20380.

(c) Requests for rates and related costs for the evaluation of bids or proposals shall include the bid opening or proposal due date and the expected date of initial shipment, if established.

(d) The locations and geographical areas of jurisdiction of each area headquarters of the MTMC are listed in Chapter 108 of the MTMR.

Part 4—Contract Administration

19-401 Traffic Management for Contract Administration. The transportation office of the contract administration office shall have access to or be furnished a copy of the contract, including modifications thereto. When the transportation data regarding f.o.b. origin contracts are insufficient for Government transportation purposes (see 19-202), the contract administration office shall obtain the data used in the evaluation of the bid or proposal from the purchasing office. This will assure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. Transportation personnel are responsible for:

(i) furnishing timely routings and releases for port shipments;
(ii) monitoring shipments to provide for carload or truckload quantities when practicable;
(iii) controlling and issuing Government bills of lading and determining proper freight classification descriptions;
(iv) reviewing documentation to assure the proper distribution and validation of shipping documents;
(v) advising as to the effect proposed changes will have on transportation costs;
(vi) determining, for the contract requirements, the size and capabilities of carrier's equipment to be ordered, based on the need for special shipping arrangements for oversize and overweight or dangerous supplies;
(vii) developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 19-402);
(viii) exercising control of irregularities in packing, loading, loss and damage causes, sealing of vehicles, and documentation of weights;
(ix) providing information on use of transit arrangements;
(x) recommending prepayment, when appropriate, by contractor for f.o.b. origin shipments or parcel post (see 19-403.2 and 19-403.3);
(xi) diverting, reconsigning, tracing, and expediting shipments;
(xii) functioning to control new shipping situations or meet emergency requirements which arise during contract administration; and
(xiii) considering the capabilities of the contractors for performing the foregoing and utilizing these capabilities when appropriate; and
(xiv) utilizing routings through established consolidation stations when it is in the best interest of the Government.

19-402 Volume Movements Within the Continental United States.

(a) Volume movement means the aggregate of one or more freight shipments to move during the contract period, amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, from one point of origin for delivery to one destination point or area. On FMS shipments, the aggregate will be 200,000 pounds or more.

(b) As soon as production schedules and planned destinations have been established after award, the transportation office serving the purchasing office shall review contracts and report planned volume movement in accordance with the Military Traffic Management Regulation (AR 55-355, NAVSUP Pub 444, AFM 75-2, MCO 4600.14, DSAR 4500.3). A copy of the volume movement report shall be forwarded to the contract administration office. On FMS shipments, include destination country, foreign freight forwarder and port of embarkation (if known).

(c) The transportation office serving the contract administration office will submit required volume movement reports (see 19-401 (vii)) when:

(i) upon review of contract it is determined that no volume movement report has been submitted by the purchasing office; or

(ii) movement requirements are refined or changed to such a degree that a revised volume movement report should be submitted.

(d) Reporting of volume movements will permit a determination of the reasonableness of applicable current rates, and when appropriate, negotiation of adjusted or modified rates, in accordance with the above regulation.

19-403 Shipping Documents Covering FOB Origin Shipments.

19-403.1 *Government Bills of Lading.* Except as provided in 19-403.2, when a contract provides that supplies be delivered f.o.b. origin, with transportation costs to be paid by the Government, shipments shall be made on Government bills of lading, or on other shipping documents prescribed by MTMC in the case of seavan containers, furnished to the contractor by the contract administration office. The contracting officer shall not authorize the contractor to ship on a commercial bill of lading for conversion to a Government bill of lading unless delivery is extremely urgent and Government bills of lading are not readily available (see 16-822 and 16-823).

19-403.2 *Use of Prepaid Commercial Bills of Lading.*

(a) When economical or otherwise justified, the contracting officer or his representative may authorize the contractor to make the following f.o.b. origin freight or express shipments (if they have no security classification) at Government expense on prepaid commercial bills of lading to domestic destinations, including United States military air terminals and water terminals:

(i) shipments not exceeding 150 pounds by any form of commercial air transportation (because of restrictions imposed by air carriers, a package weighing more than 100 pounds or measuring more than 44 x 24 x 30 inches should not be tendered to a commercial air carrier unless it is known that it will be accepted;

(ii) shipments not exceeding 250 pounds by railway express or bus express (because of restrictions imposed by bus express carriers, a package weighing more than 100 pounds or measuring more than 45 x 24 x 24 inches should not be tendered to the bus express carrier unless it is known that it will be accepted;

(iii) shipments not exceeding 1,000 pounds by other common carriers; or

(iv) shipments by common carriers, other than specified in (i) and (ii) above, which can be consolidated with the contractor's own prepaid shipments for delivery to one or more destinations; *provided* that, all appropriate f.o.b. origin shipments, under one or more Government contracts, have been consolidated initially. The contractor may be authorized to consolidate less-load Government shipments with his own shipments to take advantage of lower carload or truckload freight costs, and the Government shall assume its pro rata share of the combined shipment cost. Overall transportation costs shall be evaluated prior to authorizing any movement to assure that savings will be realized by the Government consistent with other contract and traffic management considerations. When consolidation is authorized, a copy of the commercial bill of lading will be mailed promptly to the consignee(s).

(b) A contract modification is not required when shipment is made under a prepaid commercial bill of lading as authorized in (a) above. Unless otherwise provided in the contract, the supplies will move for the account and at the risk of the Government, and will become Government property when loaded on the carrier's equipment and the contractor has obtained the carrier's receipt. The contractor pays the transportation charges and is reimbursed by the Government. Loss or damage claims shall be processed in accordance with directives of the Department concerned.

(c) Unless otherwise provided by the contract, when the contractor is authorized to ship on a prepaid commercial bill of lading in lieu of a Government bill of lading, he must agree to show the prepaid transportation charges, or apportioned charges as agreed (see (a)(iv) above), as a separate item on the invoice for each individual shipment of supplies. The contractor also must agree to retain related freight bills or other transportation billings paid separately for a period of three years and to furnish such bills to the Government when requested for audit purposes. When reimbursement of transportation charges is provided in the contract, the contract shall contain the agreement for retention of such bills. When the contracting officer or his representative authorizes prepaid shipment in special instances, subject to reimbursement, the written authority shall contain the instructions as to retention of freight bills. When transportation costs are to be reimbursed to the contractor under a cost reimbursement type contract, insert the clause in 7-204.61.

19-403.3 *Shipments by Parcel Post or Other Classes of Mail.*

(a) Use of parcel post or other classes of mail permits direct movement from the source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries of mailable matter which meet the size, weight, and distance limitations prescribed by the Post Office Department. Contractors shall not divide delivery quantities into mailable parcels for the express purpose of avoiding shipments by other modes of transportation.

(b) *Printing, Recruiting, and Advertising Contracts.* When parcel post or other classes of mail used by printing contractors, and contractors in connection with publicity and advertising campaigns related to recruitment, involve F.O.B. origin contracts, the procedures in this paragraph or in paragraph (c) below are authorized in accordance with the best interests of the Government. When parcels are to be mailed under "Postage and Fees Paid" indicia, the clause in

7-104.85(b) shall be used and the contractor shall be provided with official mailing labels, envelopes, or cards printed "Postage and Fees Paid." Labels, envelopes, or cards furnished to contractors must bear in every case the *printed* return address of the military activity of the Department or Agency concerned over the printed words "*Official Business*" and must bear the proper permit imprint number. The name and address of a private person or firm shall not be shown. Printing requirements obtained through the Government Printing Office are subject to instructions provided by the GPO.

(c) *Other Contracts.* When parcel post or other classes of mail are used by contractors other than in (b) above in connection with F.O.B. origin contracts, the clause in 7-104.85(a) shall be used and the contractor will prepay the postage costs by using his own mailing labels or stamps. Reimbursement for prepaid postage costs will be obtained by including such costs as a separate item on the invoice for supplies shipped. Use of indicia mail is not authorized. Deviations from this policy shall be processed pursuant to 1-109 and, when granted, the requesting Department must satisfy the U.S. Postal Service permit requirements.

(d) When the contractor uses his own labels for making shipments to post offices serving military consignees outside the United States, the parcels shall be stamped or printed with the name of the Military Department, *i.e.*, "(*Army, Navy, Air Force, or DLA*), Official Mail—Contents for Official Use—Exempt from Customs Requirements" in 1/4 inch block letters immediately above the label, to permit identification and to expedite handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when he is to be reimbursed for the cost of postage.

(e) Shipments may not be insured at Government expense for the purpose of recovery in case of loss or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

19-404 Routing, Tracing, and Expediting Shipments. Routing of military freight consists of determining a mode of transportation and the carrier which will effect safe and timely delivery of supplies at the lowest overall cost. Tracing is the procedure used for locating unduly delayed shipments. Expediting is the procedure used when a shipment is urgently needed at destination or when congestion is likely to occur on the lines of the carriers over which the shipment is to move. Methods for tracing or expediting shipments are outlined in Chapter 220, Military Traffic Management Regulation.

19-405 Demurrage and Detention Charges.

(a) *Demurrage* is a fixed charge made by rail carriers on cars held by, or for, a consignor or consignee for loading, unloading, or for any other purpose. A contractor who detains cars for these reasons is required to pay the carrier's published tariff charges for demurrage. Generally, carrier demurrage rules allow a definite period called "free time" for loading or unloading cars or for any other purpose, and impose a definite per day per car charge for cars held beyond this period. The free time allowed is usually 48 hours for loading or unloading cars and 24 hours when cars are held for reconsignment, diversion, reshipment, or held in transit on orders of the shipper or consignee. Normally, the free time starts from the first 7 a.m. (excluding Saturdays, Sundays, and holidays) after placement of the car.

(b) *Detention* is the term used when motor carrier equipment is held by, or on behalf of, a shipper or consignee beyond a reasonable period allowed for loading, unloading, forwarding directions, or for any other purpose. Motor carrier detention rules and charges are not uniform and are published in individual carrier or agency tariffs. Detention charges are usually based on an hourly rate.

(c) Procedures involving payment or collection of demurrage or detention charges are contained in paragraph 219010 of the Military Traffic Management Regulation.

19–406 Discrepancies Incident to Shipment of Supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss and damage, improper markings, and consignment deficiencies (see Reporting of Transportation Discrepancies in Shipments—AR 55-38, NAVSUP Pub 459, AFR 75-18, MCO P4610.19, DSAR 4500.15). Improper markings or consignment deficiencies may result in misdirected shipments or additional handling or stowing of shipments, or affect identification of contents which necessitates opening of containers.

(b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also the accountable office for the supplies, and all claims or reports dealing with discrepancies are initiated at that point in accordance with the property accountability regulations of the Department concerned. The administrative procedures required in Chapter 221 of the Military Traffic Management Regulation govern the actions to be taken with respect to discrepancies caused by carriers.

(c) When supplies are procured on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is a matter for settlement between the contractor and the carrier. However, the Government consignee shall notify the carrier of the discrepancy by noting the exception on the carrier's receipt and shall furnish all available data to the contract administration office which shall promptly transmit the data to the contractor.

19–407 Report of Shipment (REPSHIP). Military storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractor's plants. Generally, such notice is required only for minimum carload or truckload shipments. The notification facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. To assure discharge by the contractor of his responsibilities related to these requirements, the substance of the clause in 7–105.4 shall be included in all appropriate solicitations.

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SECTION XX

ADMINISTRATIVE MATTERS

20–000 Scope of Section. This Section covers administrative requirements and procedures in connection with the preparing, numbering, reviewing, and executing of contracts and other instruments related thereto, to insure that contracts include the required data to support the transaction.

ADMINISTRATIVE MATTERS

Part 1—Execution of Contracts

20-101 Contracting Officer's Signature.

(a) The contracting officer shall sign on behalf of the United States, over his typed, stamped, or printed name and official title. In the case of negotiated contracts, the contracting officer shall sign after the contractor, except where otherwise required by the particular contract form or by the circumstances of the procurement.

(b) Each signed or reproduced copy of the signed contract (see 1-201.4) which is intended to have the same force and effect as the executed original shall be stamped '*DUPLICATE ORIGINAL*'.

20-102 Contractor's Signature.

(a) *Contracts With Individuals.* A contract with an individual shall be signed by the individual in his own name. A contract with an individual doing business as a firm shall be signed by that individual and will ordinarily take the following form.

..........................*JOHN DOE*...SIGNED
JOHN DOE, an individual doing business as
JOHN DOE COMPANY

(b) *Contracts With Partnerships.* Contracts entered into with partnerships shall be executed in the partnership name. The contract need be signed by only one partner *provided* the authority of the particular partner to bind the partnership has been established. The evidence required to establish the authority of a particular partner to bind the partnership is for the determination of the contracting officer. Prior to execution of the contract a list of all members of the partnership shall be obtained.

(c) *Contracts With Corporations.* Contracts with corporations shall be executed in the corporate name, followed by the word "by" after which the person who has been authorized to execute the contract on behalf of the corporation shall sign his name, with the designation of his official capacity. The evidence required to establish the authority of a particular person to bind a corporation is for the determination of the contracting officer.

(d) *Contracts With Joint Venturers.* Contracts with joint venturers may involve a corporation and a partnership, a partnership and an individual, or other combination. In these cases the contract shall be signed by each participant in the joint venture in the manner indicated above for each type of participant. When a corporation is participating, a certificate should be obtained from its secretary stating that the corporation is authorized to participate in the joint venture.

(e) *Signature of Agents.* When the contractual document is to be signed by an agent, other than as stated above, the fact of the agency must be clearly established by evidence satisfactory to the contracting officer.

Part 2—Uniform Procurement Instrument Identification Numbers

20–201 Scope of Part. This Part prescribes procedures for assigning identifying numbers to all contracts and to other instruments related thereto, including solicitation documents and delivery orders, issued pursuant to this Regulation. This Part does not apply to procurement instruments issued by the Defense Commercial Communications Office, Defense Communications Agency. The provisions of this Part are optional where the procurement instrument will be completely administered by the purchasing office or the consignee, except that as a minimum such instrument numbers shall not exceed 19 characters (excluding hyphens) for the procurement instrument identification number including any supplemental modification or order identification number, and such instrument numbers shall commence with the identification of the purchasing office and the fiscal year, in accordance with 20–203.1(i) and (ii) and Appendix N.

20–202 Policy.

(a) The uniform procurement instrument identification (hereafter referred to as PII) numbering system as prescribed in this Part shall be used for instruments of the types listed in 20–203.1 (iii), 20–204.2, 20–204.3, 20–204.4.

(b) Numbers, including Federal Supply Contract numbers and any prescribed supplementary numbers, shall be placed in spaces provided on the applicable procurement forms, with major elements separated by dashes—for example, DABE01–66–M–0001. If a space is not otherwise provided, the prescribed numbers shall be placed in the upper right-hand corner of the form.

(c) Alpha-numeric characters, other than those prescribed in this Part, shall not be used as a part of the PII numbering system If other identification is required in accordance with Departmental procedures, it shall be placed on the procurement instrument in such a location as to clearly separate it from the PII number prescribed herein.

20–203 Basic Procurement Instrument Identification Number.

20–203.1 *Elements of Number.* The basic PII number should be retained unchanged for the life of the particular instrument and shall consist of 13 alphanumeric characters positioned as follows:

(i) The first six positions shall commence with the capital letters assigned to the Department preparing the instrument as follows:

DA	Department of the Army
F	Department of the Air Force
DCA	Defense Communications Agency
N	Department of the Navy (except Marine Corps)
M	Marine Corps
DSA	Defense Supply Agency
DNA	Defense Nuclear Agency
DMA	Defense Mapping Agency
DCPA	Defense Civil Preparedness Agency.

The remainder of the first six positions shall be the alpha-numeric characters which, together with the Departmental identification shown above, identify the activity preparing the instrument. All six positions shall be used. If necessary, nonsignificant zeros shall be placed between the Department identifier and the activity identifier. A listing of applicable numbers is contained in Appendix N to this Regulation.

(ii) The seventh and eighth positions shall be the last two digits of the fiscal year in which the PII number is assigned.

(iii) The ninth position shall be a capital letter assigned to indicate the type of instrument code, as follows:

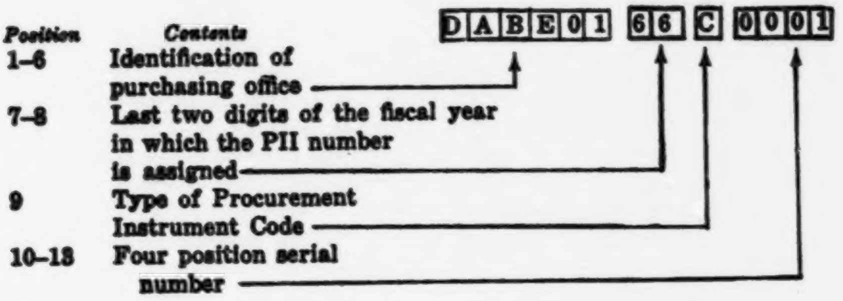
A Blanket Purchase Agreements
B Invitation for Bid
C Contracts, including Letter Contracts, contracts incorporating basic agreements, and contracts providing subsequent provisioning, but excluding Indefinite Delivery Type Contracts
D Indefinite Delivery Type Contracts
E Facilities Contract
F Delivery orders placed with or through other Government departments or agencies or against contracts placed by such department or agencies (*i.e.*, outside the Department of Defense and including blind-made supplies)
G Basic Ordering Agreements
H Agreements, including Basic Agreements
L Lease Agreement
M Purchase Order—manual (assign W when numbering capability of M becomes exhausted during a fiscal year)
N Notice of Intent to Purchase
P Purchase Order—automated (assign V when numbering capability of P becomes exhausted during a fiscal year)
Q Request for Quotation—manual
R Request for Proposal
S Sales Contract
T Request for Quotation—automated (assign U when numbering capability of T becomes exhausted during a fiscal year).

The letters X, Y and Z are reserved for Departmental use.

(iv) The tenth through thirteenth positions shall be the serial number of the instrument. A separate series of serial numbers may be used for any type of instrument listed in (iii) above. Each such series of PII numbers for the same activity shall commence with the number 0001 at the start of each fiscal year. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with an alpha in the first (or first and second) position followed by the three (or two) position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

A001 through A999, B001 through B999, and so on to Z001 through Z999.
then AA01 through AA99, AB01 through AB99, and so on to AZ01 through AZ99.
then BA01 through BA99, BB01 through BB99, and so on to BZ01 through BZ99.
and so on to
ZA01 through ZA99, ZB01 through ZB99, and so on to ZZ01 through ZZ99.

20–203.2 *Illustration of Number.* The following illustrates the configuration of the PII number as prescribed in 20–203.1.



Position	*Contents*
1–6	**Identification of purchasing office**
7–8	**Last two digits of the fiscal year in which the PII number is assigned**
9	**Type of Procurement Instrument Code**
10–13	**Four position serial number**

20–204 Supplementary Procurement Instrument Identification Numbers.

20–204.1 *Uses of the Number.* Supplementary numbers, used in conjunction with basic PII numbers, shall be employed to identify:

(i) amendments to solicitation documents;

(ii) modifications of contracts and agreements (Provisioned Item Orders will be treated and numbered as modifications); and

(iii) calls/orders under contracts (except Federal Supply Schedule contracts), under basic ordering agreements and under blanket purchase agreements.

20–204.2 *Amendments to Solicitation Documents.* Amendments to each solicitation document shall be sequentially numbered by use of a four position numeric serial number supplementary to the basic PII number, commencing with 0001.

20–204.3 *Modifications of Contracts and Agreements.*

(a) Contract modifications, as defined in 1–201.2, and modifications to agreements shall be numbered by use of a six position alpha-numeric number supplementary to the 13 position basic PII number as follows:

(i) The first position shall be a capital letter identifying the issuing office and the type of modification as indicated below:

A Contract Administration Office modifications
P Purchasing Office modifications

(ii) The second through sixth positions shall be a serial number. The second and third position may be alpha or numeric, except that the letters K, L, M, N, P, S, T, U, V, W, X, Y and Z are excluded and reserved for the express purposes as follows:

(A) For a definitized letter contract the second position shall be a Z; in other words, the letter Z will be used only for that modification which represents the definitized contract (see 3–408(e)).

The serial numbers of modifications occurring after the definitization will continue the sequence in the manner provided in this paragraph, without the letter Z.

(B) Only the letter T, U, V, W, X or Y may be used in the second position when a modification is issued providing initial shipping instructions or amending those shipping instructions previously issued (see 19-204) in those cases in which contract provides delivery FOB origin and no price change is involved. Modifications shall be serially numbered by each issuing activity. The foregoing is not mandatory on purchase offices that issue and control all modifications.

(C) The letter S only may be used in the second position when a modification is issued providing initial or amended shipping instructions in those cases in which the contract provides delivery FOB destination or the contract provides delivery FOB origin and a price change is involved. Each modification shall be serially numbered.

(D) The letters K, L, M, N, P, and Q are reserved for the exclusive use of the Air Force only in the second position for a Provisioned Items Order (See 4-302.2). Provisioned Items Orders shall be serially numbered by each issuing activity.

(E) The fourth through sixth position shall always be numeric. A separate series of serial numbers shall be used for each type modification listed in (i) and (ii)(B), (C) and (D) above. The modifications issued by an activity for a contract shall be numbered as set forth below:

Normal Modification	*Provisioned Items Order (Reserved for exclusive use by the Air Force only)*	*Shipping Instructions*
00001 - 99999	K0001 - K9999	S0001 - S9999
then	KA001 - KZ999	SA001 - SZ999
A0001 - A9999	L0001 - L9999	T0001 - T9999
B0001 - B9999	LA001 - LZ999	TA001 - TZ999
and so on to	M0001 - M9999	U0001 - U9999
H0001 - H9999	MA001 - MZ999	UA001 - UZ999
then	N0001 - N9999	V0001 - V9999
J0001 - J9999	NA001 - NZ999	VA001 - VZ999
then	P0001 - P9999	W0001 - W9999
R0001 - R9999	PA001 - PZ999	WA001 - WZ999
then	Q0001 - Q9999	X0001 - X9999
AA001 - HZ999	QA001 - QZ999	XA001 - XZ999
then		Y0001 - Y9999
JA001 - JZ999		YA001 - YZ999
then		
RA001 - RZ999		

(iii) ARZ999 is the six position alpha-numeric number to be utilized the first time the office of administration or disbursement is being changed by use of computer generated modifications initiated by a CAO. The second change will utilize ARZ998, the third change ARZ997 and so forth. This method will only be utilized when mass changes are required.

(b) Supplementary identification numbers for modifications shall be assigned in consecutive chronological sequence by each issuing office authorized to issue modifications. To assure chronological assignment, modification numbers shall be assigned only after it has been determined that a modification is to be issued.

20–204.4 *Delivery Orders Under Indefinite Delivery Type Contracts, Orders Under Basic Ordering Agreements, and Calls Under Blanket Purchase Agreements.*

(a) Delivery orders under indefinite delivery type contracts (orders), orders under basic ordering agreements (orders), and calls under blanket purchase agreements (calls) shall be identified by a four position alpha-numeric "call/order serial number" which is supplementary to the 13 position basic PII number.

- (i) Calls/orders issued by the purchasing office identified in the basic PII number shall be assigned numeric call/order serial numbers, beginning with 0001 through 9999.
- (ii) Calls/orders issued by an office other than the purchasing office identified in the basic PII number shall be assigned alpha-numeric call/order serial numbers as follows—
  - (A) The first and second position shall be the alpha-numeric call/order serial number assigned to Appendix N to the activity issuing the call/order. The letters A, I, O, and P shall not be used in the first position; however, A and P may be used in the second position.
  - (B) The third and fourth positions shall be a serial number assigned by the issuing activity. The first call or order issued each contract or agreement shall be numbered 01. After the serial number 99 is used, a uniform series of numeric/alpha, alpha/numeric, and finally alpha serial numbers shall be assigned as follows (the letters I and O shall not be used):

    1A, 1B and so on to 1Z then 2A, 2B and so on to 2Z and so on to
    9A, 9B and so on to 9Z followed by
    A1, A2 and so on to A9 then B1, B2 and so on to B9 and so on to
    Z1, Z2 and so on to Z9 followed by
    AA, AB and so on to AZ then BA, BB and so on to BZ and so on to
    ZA, ZB and so on to ZZ.

(b) If it is necessary to modify a call/order, a two position alpha-numeric suffix (known as the call/order modification indicator) shall be added to the supplementary PII number as follows (the letters I and O shall not be used):

- (i) modification to a call/order—issued by the purchasing office, excluding any modification providing shipping instructions in those cases described in (ii) and (iii) below—01, 02, and so on through 99 then B1 - B9, BA - BZ, C1 and so on through NZ and Z1 through ZZ;
- (ii) modification to a call/order issued by a purchasing office providing initial or amended shipping instructions in those cases in which the call/order provides for delivery FOB destination or delivery FOB origin and a price change is involved — P1 - P9, PA - PZ, Q1 - Q9, QA - QZ, etc., through TZ,
- (iii) modification to a call/order issued by a purchasing office providing initial shipping instructions or amending those shipping instructions previously issued (see 19–204) in those cases in which the call/order

provides delivery FOB origin and no price change is involved — U1 - U9, UA - UZ, V1 - V9, VA - VZ, and so on through YZ; and

(iv) modifications to a call/order issued by a Contract Administration Office (CAO) will begin with 1A, 1B, and so on to 1Z; then 2A, 2B, and so on to 2Z; and so on to 9A, 9B, and so on to 9Z, followed by A1, A2, and so on to A9; then AA, AB, and so on through AZ.

AZ will be utilized the first time a modification is generated by mechanical means (computer program) to change the name of the administration office or disbursing office. The second change will utilize AY, the third change AX and so forth. This method will only be utilized when mass changes are required.

90-108 O—82——14

BEST DOCUMENT AVAILABLE

ADMINISTRATIVE MATTERS

Part 3—Uniform Contract Line Item Numbering System

20–301 Scope of Part. This part prescribes procedures for establishing and numbering all items of supplies or services set forth in contracts and in other documents related thereto issued pursuant to this Regulation.

20–302 Policy.

(a) These procedures provide criteria for establishing and numbering contract line items, contract subline items, exhibits, exhibit line items, and exhibit subline items.

(b) The procedures prescribed in this part shall be used in contracts (as defined in 1–201.4) and in provisioning and other documents which are expected to become parts of contracts.

(c) When practicable, these procedures also shall be used in solicitations and other contractual documents.

(d) These procedures are mandatory for all contracts except as follows:

- (i) when no post-award contract administration function (see 1–406 and 20–703.3(b)) on the specific contract is assigned to any office listed in DoD Directory of Contract Administration Services Components;
- (ii) indefinite delivery type contracts for petroleum products under which posts, camps and stations issue delivery orders for such products for their own use; or
- (iii) Communication Service Authorizations issued by the Defense Commercial Communications Office, Defense Communications Agency.

(e) For cost-reimbursement type contracts, the provisions of this Part apply except for the requirements in 20–303.1(a)(i) and 20–304.2(c)(ii) for a single unit price or single total price or amount for each contract line or subline item.

(f) For maintenance and repair service type contracts in which firm prices for elements of the total price of an item are established but the number and quantity of such elements performed in order to determine the final item price to be paid are not known until performance (for example, a labor-hour contract), the provisions of this Part apply except for the requirements in 20–303.1(a)(i) and 20–304.2(c)(ii) for separate contract line items or subline items because of unit price differences for individual quantities of a line item or subline item. In lieu of establishing separate contract line items or subline items because of price differences, contractual documents for these types of contracts may be structured to reflect a firm or estimated total item amount for each such line or subline item only (omitting unit price).

20–303 Contract Line Items.

20–303.1 *Criteria for Establishing.*

(a) Requirements for supplies or services shall be established as contract line items. Each contract line item shall:

- (i) have, or be anticipated to have, a single unit price or, if no unit price is established, a single total price or amount (unless associated subline items of other than an informational nature are separately priced in accordance with 20–304.2(c)(ii); in which case, no price shall be assigned to the contract line item, except for informational purposes unit prices and/or amounts may be entered in parentheses within the item description block); however, the unit price may be entered as "NSP" (not separately priced) *provided*, the price of this item is included in the unit price of another contract line item;

(ii) be separately identifiable, *i.e.*, no more than one National Stock Number, one item description, one Manufacturer's Part Number, etc., for a supply line item, or no more than one Scope of Work, one Description of Services, etc., for a services line item (unless this identification is provided by associated subline items of other than an informational nature; in which case, a general narrative description shall be assigned to the contract line item number and the subline item shall include the actual detailed identification in accordance with 20-304.2(c)(iii)); and

(iii) have a separate delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule) unless there are associated subline items of other than an informational character that meet this requirement (When a requirement has multi-delivery dates or multi-destinations or multi-performance dates/points, that factor alone shall not require but does not preclude establishment of more than one contract line item. However, when more than one delivery date and/or more than one destination are identified to a single contract line item, the delivery schedule will specify delivery dates for the item by the destination when established, or individual contract line items may be established for each destination and/or delivery date and/or requisition.).

(b) As an alternative to setting forth in the Schedule an extensive list of contract line items, they may be shown in a contract exhibit as exhibit line items (see 20-305 and 20-306). In these cases, a Contract Line Item Number (CLIN) which references the exhibit will be assigned in the Schedule and shall specify the exhibit identifier. Contract line items for provisioned spares shown on a contract exhibit and data items shown on DD Form 1423, Contract Data Requirements List, when used as an Exhibit shall specify the exhibit identifiers.

(c) Requirements for test model approval under the development phase or for first article approval under the production phase (whether the requirement is for first article delivery for Government testing or for first article approval test report delivery based on contractor testing) shall require the establishment of a separate contract line or subline item for each item of supply or service (one Scope of Work, one Performance Description, one National Stock Number, one Manufacturer's Part Number, one drawing and piece number) unless the test model or first article consists of a lot composed of a mixture of items, in which case a single contract line or subline item may be established for the lot.

(d) Requirements expressing contractor responsibilities for which a separate price is not established or contained in the price of a supply or service line item but for which the contractor may be entitled to payment, shall not be assigned a contract line or subline item number but shall be identified in the contract schedule. Examples of such requirements are transportation, packaging and handling, reusable containers, and state and/or local taxes. If it is determined that a separate price is to be established for these requirements, they shall meet the criteria in (a) above or in 20–304.2(c) and shall be established as a line or subline item.

20–303.2 *Procedures for Numbering.*

(a) Contract line items within a contract shall consist of four numeric digits 0001 through 9999 and shall be numbered sequentially but not necessarily consecutively. Unless there is a valid reason to the contrary, the identical line item number assigned to an item in a solicitation pursuant to 20–302(c) shall be assigned to that item when an award is made. Any given contract line item number shall not be assigned more than once in a contract, and line item numbers beyond "9999" shall not be used.

(b) When a contract line item contains subline items, each such subline item shall be numbered by adding to the basic line item number, two alphabetic or two numeric characters as specified in 20–304.

20–304 Contract Subline Items.

20–304.1 *General.* Contract subline items provide a further subdivision of the basic contract line item when it is necessary for contract performance or administration purposes to separately identify subordinate requirements. There are only two categories of contract sublines.

(a) The first category comprises those subline items that are included in the procurement instrument for information purposes only and are identified by a numeric suffix. These subline items are an integral part of the associated contract line item but shall not be scheduled separately for delivery, separately identified for shipment or performance or separately priced for payment purposes.

(b) The second category comprises those subline items that have a separate delivery schedule, require separate identification at the time of shipment or performance and/or are separately priced for payment purposes. These subline items are identified by an alpha suffix.

20–304.2 *Criteria for Establishing.*

(a) Subline items included in procurement instruments for informational purposes only (numeric suffix) shall be established at the discretion of the contracting officer. This type of subline item identifies information that relates directly to and is an integral part of the contract line item; *e.g.*, parts of an assembly or parts of a kit. Such subline items shall not have a separate delivery schedule, a separate price for payment purposes or require separate identification at the time of shipment or performance. Informational quantities, prices or amounts determined by the contracting officer as necessary to satisfy management requirements may be identified to such subline items provided that such quantities, prices or amounts are set forth in parentheses within the Supplies/Services (item description) column of the contractual document (*i.e.*, not within the quantity and price columns).

(b) Subline items that have a separate delivery schedule, require separate identification at the time of shipment and/or are separately priced for payment purposes (alpha suffix) shall be established in lieu of line items at the discretion of the contracting officer. This category subline item shall be established whenever a capability must be provided to accumulate separately identified price and/or quantity data at the contract line item level. For instance, this category subline may be used to identify:

(i) identical items that are to be paid from more than one accounting classification (unless separate contract line items have been established for each accounting classification or accounting classifications have been identified to each consignee in the contract line item delivery schedule in accordance with 20-308);

(ii) items of an identical nature where different sizes have been assigned discrete federal supply stock numbers and/or different prices;

(iii) individually payable items such as packaging costs that pertain to a contract line item but are not included in the contract line item price (in this case, item description, price and quantity data for the line item also are to be entered as a separate subline item);

(iv) individual delivery dates and/or destinations and/or requisitions when multiple delivery dates, destinations and/or requisitions are designated in the procurement instrument for a contract line item; or

(v) parts of an assembly or parts of a kit when the parts have a separate delivery schedule, require separate identification at the time of shipment or performance and are separately priced for payment purposes.

Whenever subline items of this category (alpha suffix) are established, the associated contract line item shall serve only as a common denominator for the accumulation of management data by the procuring activity and all requirements for the associated contract line item will be identified as subline items (All shipments and payments will be made at the subline item level.).

(c) Subline items in the alpha suffix category ((b) above) shall:

(i) have a separate (*i.e.*, subline item level) delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule); and

(ii) have or be anticipated to have a single unit price or, if no unit price is established a single total price or amount (When all subline items for a particular contract line item are identical services or supply items that have identical unit prices, the unit price and total amount (extended unit price for all subline items) may be shown at the contract line item level, or the unit price may be shown at the contract line item level and the extended amounts shown at subline item level, or the unit price and total amounts may be shown at subline item level, but only one of these methods may be used for a contract line item and its associated subline items. However, if any subline item has a different unit price than the remainder of the subline items, all subline items shall be separately priced and the contract line item shall not be priced. In this latter instance, subline items that are not separately priced but must be separately identified for shipment and management purposes may indicate a unit price of "NSP" (not separately priced) *provided*, the price of this item is included in the unit price of another subline item or different contract line item. The clause set forth in 7-104.7 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered. In no instance will the contract line item/subline item structure be constructed in such a way as to require the identification of contractor products or services (shipment or performance) at the subline item level and contractor payment at the contract line item level.); and

(iii) be separately identifiable (*i.e.*, no more than one National Stock Number, one Item Description, one Manufacturer's Part Number, etc., for a supply subline item, or no more than one Scope of Work, one Description of Services, etc.) for a services subline item.

20-304.3 *Procedures for Numbering.*

(a) When contract subline items are established within a contract line item, the total effort shall be assigned a contract line item number and each subline item shall be assigned a contract subline item number.

(b) Contract subline items established within a contract line item for information purposes only (see 20-304.1(a) and 20-304.2(a)) shall be numbered by adding to the contract line item number two numeric characters commencing with "01" and continuing through "99." No such designation shall be assigned more than once to the same contract line item number within a procurement instrument. The two supplemental numeric characters shall be placed immediately following the contract line item number without separation by spaces or special characters. Example follows:

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	15B/EE Periscope Adapter System. NSN-2040-00-916-2842, including one set of the following for each system.	12	EA	$72,831.00	$873,972.00
000201	Indicator and Control Box (1 ea)				
000202	Well Junction Box (1 ea)				
000203	Remote Indicator Box (ECM RM) (1 ea)				
•	• • •				
000210	Set Dip Loop Cables (1 ea)				

NOTE: In the above instance, the delivery schedule will identify the contract line item (not the subline items) and all shipments and payments will be at the contract line item level. Shipment documents and payment vouchers will not identify subline items.

(c) Contract subline items established to identify contractual requirements that have a separate delivery schedule, require identification at the time of shipment or accomplishment and/or are separately priced for payment purposes (see 20-304.1(b) and 20-304.2(b)) shall:

(i) be numbered by adding to the contract line item number two alphabetic characters commencing with "AA" and continuing through "ZZ." (The letters "I" and "O" shall not be used.) Contract sublines shall be numbered sequentially but not necessarily consecutively. No such designation shall be assigned more than once to the same contract line item number within a contract;

(ii) be sequenced within a contract line item as follows: AA, AB, AC through AZ; then BA, BB, BC through BZ; and continuing, if necessary through ZZ; and

(iii) be constructed by placing the two supplemental alphabetic characters immediately following the contract line item without separation by spaces or special characters. For example, with contract line item number "0001" the first three contract subline items, if consecutive, would be numbered "0001AA," "0001AB," and "0001AC."

Examples of correct line item structures in this category follow:

Example 1.—Subline items structured to identify destinations for identical items, identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Heli copter PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	10	EA	$100.00	$1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	15	EA	$100.00	$1,500.00

Example 2.—Subline items structured to identify destinations for identical items, not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	20	EA	$ 99.00	$1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	30	EA	$ 98.00	$2,940.00

NOTE: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

Example 3.—Subline items structured to identify different sizes of an item that are identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0013	Boots Insulated, Cold Weather White, Type II, Class 1		PR	$38.35	$13,422.50
0013AA	8430- 00 -655-5541 Size 5N	50			
0013AB	8430- 00 -655-5544 Size 8N	70			
0013AC	8430- 00 -655-5551 Size 9N	30			
0013AD	8430- 00 -655-5535 Size 9R	200			

NOTE: Unit price and total amount shown at line item level rather than at subline item level, as authorized by 20-304.2(c)(ii), when all subline items of a line item are identically priced.

Example 4.—Subline items structured to identify different sizes of an item that are not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I				
0002AA	First Article	1	LO	NSP	
0002AB	8470- 00 -141-0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470- 00 -141-0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470- 00 -141-0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470- 00 -141-0938, Large Long	804	SE	365.77	294,079.08

NOTE: First Article entered as "Lot" in accordance with 20-303.1(c).

Example 5.—Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	6105-00-635-6568 50380 Ref No 63504-WZ Armature Motor ACR: AA				
0001AA	6105-00-635-6568 50380 Ref No 63504-WZ Armature Motor	2	EA	$2,895.87	$5,791.74
0001AB	Packaging	2	EA	289.58	579.16

Example 6.—Subline items structured to identify different accounting classifications for identical items (Delivery schedule shall be established for each subline item, not the contract line item.).

ACCOUNTING AND APPROPRIATION DATA

AJ: 17X1505183503150691000001 92B000000000000000000
AK: 17X1505183703175691000001 92B000000000000000000
AL: 17X1505193503143691000001 92B000000000000000000

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Pulse Decoder KY-312/ASQ-19		EA	$3,037.40	
0002AA	Pulse Decoder KY-312/ASQ-19 ACR: AJ	2			$6,074.80
0002AB	Pulse Decoder KY-312/ASQ-19 ACR: AK	6			18,224.40
0002AB	Pulse Decoder KY-312/ASQ-19 ACR: AL	2			6,074.80

NOTE: Unit price may be shown at line item level and total amounts shown at subline item level, as authorized by 20-304.2(c)(ii), when all subline items of a line item are identically priced.

Example 7.—Subline items structured to identify parts of an assembly (Delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	Automatic Degausing System Consisting of: (2 ea @ $52,061; $104,122 total)				
0003AA	Switchboard	2	EA	$52,061.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type (145 Amps, 230 V DC)	2	EA	NSP	
•	•	•		•	•
0003AF	Power Supply (A Coil) SSM Type (113 Amps, 230 V DC)	2	EA	NSP	

NOTE: In the above instance, the price of all other subline items indicated by "NSP," is included in the Switchboard. The clause set forth in 7-104.7 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

Example 8.—Subline items structured to identify parts of a kit (Delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level.).

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Conversion Kit to Convert Torpedo MK 46 Mod 0 to Torpedo MK 46 Mod 1 (50 Kt @ $10,868.52; $543,426 total).				
0001AA	Integrator Assy LD 620106	50	EA	$10,868.52	$543,426.00
0001AB	Pulse Generator Assy LD 587560	50	EA	NSP	
0001AC	Drive Shaft Assy LD 587559	50	EA	NSP	
•	• •			•	•
0001BF	Actuator Panel Assy LD 542924	50	EA	NSP	

NOTE: In the above instance, the price of all other subline items indicated by "NSP" is included in the Integrator Assembly. The clause set forth in 7-104.7 shall be inserted in applicable contracts when, in the opinion of the contracting officer becuase of dollar value or other consideration, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

20-305 Contract Exhibits.

20-305.1 *Definition*. See 1-201.33.

20-305.2 *Criteria for Establishing*.

(a) As an alternative to setting forth in the Schedule an extensive list of contract line or subline items (e.g., spare parts lists), a contract line item may be established referencing a document attached to the contract which shall be designated an Exhibit. The Exhibit shall set forth as exhibit line items what would otherwise be shown as contract line items. When Exhibits are used, the following shall apply:

(i) Each Exhibit shall apply to one contract line or subline item only; however, more than one Exhibit may apply to a single contract line item.

(ii) DD Form 1423 (Contract Data Requirements List) may be used as an Exhibit or as an Attachment. If used as an Exhibit, the Exhibit identifier (20-305.3) shall be entered in the "TO EXHIBIT" line in the upper left corner of the form (the "ATCH NR" line shall be left blank), one contract line or subline item shall be established in the Schedule which reflects the Exhibit, and the standard procedures for identifying Exhibits prescribed in 20-305.3 below and for numbering exhibit line and subline items prescribed in 20-306 shall be followed. If the DD Form 1423 is used as an Attachment, a numeric attachment number shall be entered in the "ATCH NR" line in the upper left corner of the form (the "TO EXHIBIT" line shall be left blank) and a separate contract line or subline item shall be established in the Schedule for, and which references, each deliverable sequence number of data on the DD Form 1423.

(iii) Contract line or subline items in the Schedule which reference an Exhibit shall not contain unit prices or total amounts, except when necessary to reflect the amount of funds for actual or estimated requirements to satisfy the management needs of the individual procuring activity. When unit prices or total amounts are shown to satisfy a management need, such prices or amounts shall be set forth in parentheses within the item description block of the contractual document (i.e., not within the unit price or amount columns).

(b) As an alternative to setting forth in the Schedule an extensive list of contract subline items, a contract subline item may be established which references an Exhibit in the same manner as for a contract line item.

(c) The term Exhibit shall not be used to identify any other attachment to a procurement instrument. When contract line items or subline items refer to a document attached to a procurement instrument which establishes a deliverable requirement, such as spare parts or data on a DD Form 1423, this document shall be termed an Exhibit. When other types of documentation are appended to or incorporated by reference in a procurement instrument, such documentation shall be referred to as an "Attachment" or other term identifying it as appended documentation. Such documentation may be attached to a contract Exhibit, provided such documentation does not identify a deliverable requirement which is not established by a contract or exhibit line or subline item.

20-305.3 *Procedures for Identifying.* Exhibits shall be identified by either a single or double capital letters. The letters "I" and "O" shall not be used. Exhibit identifiers need not be assigned consecutively, nor sequentially, but they shall not be duplicated within a procurement instrument and shall always appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 20-306). Each page of the Exhibit shall have the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number cited thereon.

20-306 Exhibit Line and Subline Items.

20-306.1 *Criteria for Establishing.* Criteria for the establishment of exhibit line and subline items shall be the same as for establishing contract line and subline items (see 20-303.1 and 20-304.2, respectively).

20-306.2 *Procedures for Numbering.*

(a) Exhibit line items within an Exhibit shall be assigned four-position numbers. The exhibit identifier (see 20-305.3) is used for the first or first and second positions; the remaining positions are assigned sequentially within each Exhibit using alpha and numeric characters. The letters "I" and "O" shall not be used. Exhibit line item numbers shall be sequenced as set forth in 20-306.3, except that numeric numbering may be employed in those cases where such numbering is adequate to meet the criteria established by 20-306.1.

(b) Exhibit subline items shall be numbered in the same manner as specified for contract subline items (see 20-304.3).

20-306.3 *Sequence of Exhibit Line Item Numbers.*

Two-position Serial Number for Double-letter Exhibit Identifier

Cumulative No. of Line Items	*Serial Number Sequence*
1-33	01 thru 09, then 0A thru 0Z, then
34-67	10 thru 19, then 1A thru 1Z, then
68-101	20 thru 29, then 2A thru 2Z, then
102-135	30 thru 39, then 3A thru 3Z, then
136-169	40 thru 49, then 4A thru 4Z, then
170-203	50 thru 59, then 5A thru 5Z, then
204-237	60 thru 69, then 6A thru 6Z, then
238-271	70 thru 79, then 7A thru 7Z, then
272-305	80 thru 89, then 8A thru 8Z, then
306-339	90 thru 99, then 9A thru 9Z, then
340-373	A0 thru A9, then AA thru AZ, then
374-407	B0 thru B9, then BA thru BZ, then
408-441	C0 thru C9, then CA thru CZ, then
442-475	D0 thru D9, then DA thru DZ, then
476-509	E0 thru E9, then EA thru EZ, then
510-543	F0 thru F9, then FA thru FZ, then
544-577	G0 thru G9, then GA thru GZ, then
578-611	H0 thru H9, then HA thru HZ, then
612-645	J0 thru J9, then JA thru JZ, then
646-679	K0 thru K9, then KA thru KZ, then
680-713	L0 thru L9, then LA thru LZ, then
714-747	M0 thru M9, then MA thru MZ, then
748-781	N0 thru N9, then NA thru NZ, then
782-815	P0 thru P9, then PA thru PZ, then
816-849	Q0 thru Q9, then QA thru QZ, then
850-883	R0 thru R9, then RA thru RZ, then
884-917	S0 thru S9, then SA thru SZ, then
918-951	T0 thru T9, then TA thru TZ, then
952-985	U0 thru U9, then UA thru UZ, then
986-1019	V0 thru V9, then VA thru VZ, then
1020-1053	W0 thru W9, then WA thru WZ, then
1054-1087	X0 thru X9, then XA thru XZ, then
1088-1121	Y0 thru Y9, then YA thru YZ, then
1122-1155	Z0 thru Z9, then ZA thru ZZ.

[See following page for three-position numbers]

Cumulative No. of Line Items	*Serial Number Sequence*
1–33	001 thru 009, then 00A thru 00Z, then
34–67	010 thru 019, then 01A thru 01Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z
136–305	and so on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BA thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0BZ
442–1121	and so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z
1258–1461	and so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ
1564–2277	and so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZZ, then
2312–2345	200 thru 209, then 20A thru 20Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z
2414–2617	and so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2Z9, then 2ZA thru 2ZZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ
2720–3433	and so on to
3434–3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468–3501	300 thru 309, then 30A thru 30Z
3502–10,403	and so on to
10,404–10,437	900 thru 909, then 90A thru 90Z, then
10,438–10,471	910 thru 919, then 91A thru 91Z
10,472–10,709	and so on to
10,710–10,743	990 thru 999, then 99A thru 99Z, then
10,744–10,777	9A0 thru 9A9, then 9AA thru 9AZ, then
10,778–10,811	9B0 thru 9B9, then 9BA thru 9BZ
10,812–11,525	and so on to
11,526–11,559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

20–307 Contract Modifications. Items of supplies or services set forth in contract or exhibit modifications shall reflect the applicable line or subline item numbers, if any, appearing in the basic contract, except in those instances when the nature of the modification necessitates reidentification of a partial quantity of an existing contract line item or exhibit line item. Situations described below are intended to furnish guidance as to when a new line or subline item number should or should not be assigned as the result of a contract modification.

(a) Modification applying to definitized items (firm price of item is included in the contract or, if this modification establishes additional quantities of items already included in the contract, the price of the item in the modification is the same as in the contract or, if this is a new item, the modification contains a firm price):

- (i) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.
- (ii) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 20–303.1(a)(ii) and 20–304.2(c)(iii)) and the unit price change is averaged to provide a revised single unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.
- (iii) If the modification adds a new item of supply or services to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.
- (iv) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and changes other than delivery date and/or, ship to mark for data, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(b) Modifications applying to undefinitized items (although a requirement for this item has already been included in the contract or previous exhibit a firm price has not been negotiated or, if this modification establishes additional quantities of an item, the price of the item in the modification is not firm or if this modification adds a new item for which the firm price has not been established):

- (i) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.
- (ii) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 20–303.1(a)(ii) and 20–304.2(c)(iii)) and the unit price change is averaged to provide a revised single estimated unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(iii) If the modification adds a new item of supply or service to the contract or Exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(iv) If the modification is undefinitized (price) and increases the quantity of an existing definitized (price) contract or exhibit line or subline item, the next unused contract or exhibit line or subline item number will be assigned to the increased quantity.

(v) If the modification increases the quantity of an existing but undefinitized (price) contract or exhibit line or subline item, the original line item number may be retained if the same unit price applies to the total quantity (existing plus increase) of the line item; if the unit price of the increased quantity differs from that of the existing quantity, the next unused contract or exhibit line item or subline item number will be assigned to the increased quantity.

(vi) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and definitizes price, the definitized portion shall retain the original contract or exhibit line or subline item number. The undefinitized portion shall be assigned the next unused contract or exhibit line or subline item number; however, if the same item on another existing contract or exhibit line or subline item has already been definitized and the newly definitized quantity is definitized at the same unit price as the existing definitized quantity, or an average definitized unit price is established for the new and the existing definitized quantities, then the undefinitized portion may retain its existing line item number and the newly definitized quantity may be added to the contract or exhibit line item for the previously definitized quantity.

(vii) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and does not change the delivery schedule nor definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(c) In any event, all items of supplies or services appearing in modifications and exhibits shall be established and numbered in accordance with the uniform numbering procedures prescribed in this part. If subline numbers are assigned, all requirements for the associated contract or exhibit line item will be identified as subline items and the contract or exhibit line item will serve only as a common denominator for the accumulation of management data.

20-308 Contract Accounting Classification Reference Number (ACRN).

20-308.1 *General.* As a method of relating the long line accounting classification citation number to detail line item scheduled information, the Accounting Classification Reference Number (ACRN) shall be utilized in all contracts assigned for the contract administration to the Defense Contract Administration Services, DSA, and to Plant Cognizance Representatives of the Military Departments and Agencies.

20–308.2 *Criteria for Establishing.* This two position alpha/numeric control code is required for Military Standard Contract Administration Procedures (MILSCAP) processing and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 16 of the MILSCAP Manual, DoD 4105.63–M.

20–308.3 *Procedures for Using the Accounting Classification Reference Number (ACRN).*

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(i) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (ii) or (iii) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(ii) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(iii) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description; and

(iv) The ACRN shall be shown in the contract Schedule in the following manner:

ACR:1D

(v) For cost reimbursement type contracts the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

20-309 Indefinite Delivery Type Contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered, (*e.g.*, 10-99 at $1.00, 100-249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 20-303) shall be applicable to indefinite delivery type contracts.

ADMINISTRATIVE MATTERS

Part 4—Distribution of Procurement Documents

20–401 Distribution of Procurement Documents.

(a) The basic contract shall be distributed in accordance with (d) below. In the interest of limiting distribution of modifications to only those offices which have an interest therein, the contract distribution list accompanying the contract shall be annotated by the purchasing office to indicate those offices which should receive copies of contract modifications.

(b) The contracting officer executing a contract or modification is responsible for complete distribution of the document within ten working days after execution. The purchasing office shall, upon assignment of the contract, furnish the contract administration office the contract distribution list and shall provide changes to the list as they occur.

(c) Except as provided in this paragraph and in (d)(i)(C) below, the procuring contracting officer shall maintain the original executed procurement document in the official contract file. The original of each modification executed by the ACO or TCO shall be provided to the PCO. Unless otherwise directed by the Department concerned, the original executed copies of orders under Basic Ordering Agreements (3–410.2) and the original executed provisioning orders (4–302.2) shall be maintained by the office issuing the orders.

(d) Copies of contracts (including agreements) shall be distributed as specified below:

- (i) one signed copy or one reproduced copy of the signed contract and each modification thereto to:
  - (A) the contractor (this copy shall be stamped "Duplicate Original");
  - (B) the contract administration office;
  - (C) the payment office, except the original executed order and, as required by Departmental regulations, additional copies of a purchase order for open market purchases of $10,000 or less, delivery order(s), and Federal Supply Schedule orders, and each modification thereto shall be distributed to the payment office. For those assigned to DCAS, only the original executed order is required which shall be sent directly to the DCAS payment office (not with the CAO copies);
  - (D) each accounting and finance office (funding office) whose funds are cited in the contract;
- (ii) in addition to the distribution in (i) above, additional copies shall be distributed as follows:
  - (A) four copies to the contract administration office (distribution shall be effected simultaneously with the copy furnished in (d)(i)(B) above;
  - (B) one copy to each consignee indicated in the contract (a transshipping terminal is not a consignee);
  - (C) one copy to the appropriate transportation office when required by 19–402 and additional copies as required by Departmental regulations;

(D) ten copies to the MIPR initiating activity in the case of coordinated procurement;

(E) two copies directly to the contract administration office cognizant of each manufacturing location where contract administration services will be required (see DoD Directory of Contract Administration Services Components 4105.59H), when administration of the contract is performed at other than the place of manufacture;

(F) one copy of each of the following type contracts and of each modification thereto to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices):

(I) cost reimbursement; time and materials, or labor-hour contract;

(II) fixed price contract with redetermination, incentive, economic price adjustment or cost allowability provisions;

(III) any other contract which requires audit service

(if there is a question as to the appropriate DCAA field audit office, contracting officers may request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office); and

(G) one copy to the CAO ADP point, except when the DODAAD code (see DoD Directory 4105.59H) is the same as that of either the CAO or payment office.

(e) When a payment office is added to an existing contract by modification, a copy of the basic contract and prior modifications shall be furnished to such office. When a contract administration office, an accounting and finance office (funding office), a consignee or other activity is added by a modification, the contracting officer shall determine the extent to which each activity is concerned with the basic contract and modifications and make distribution accordingly.

(f) Distribution of modifications issued pursuant to 20-204.3(a)(ii)(B) and 20-204.4(b)(ii) may be limited to the following:

(i) Contractor;
(ii) Receiving Activity;
(iii) Contract Administration Office;
(iv) Payment Office;
(v) CAO ADP point in accordance with (d)(ii)(G) above.

(g) Distribution of overhead rate agreements issued pursuant to 3-705 may be limited to the contractor and the executing contracting officer.

(h) When the purchasing office retains responsibility for administration of a contract containing the Cost Accounting Standards clause (7-104.83(a)), one copy of the contract shall be forwarded to the Contract Administration Office (Attn: ACO) cognizant of the contractor's facility (see DoD Directory 4105.59H). The following notation will be inserted in bold print on the face of the contract: **"FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY"**. (See 3-1208(c) for contracts at facilities under the cognizance of a non-DoD organization.)

(i) Distribution of contract modifications generated by mechanical means (computer program) may be limited to the following: (1) Contractor, one copy; (2) CAO, one copy; New Payment Office, one copy; (4) PCO, one copy; (5) Funding Activities, one copy to each.

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Part 5—Contract Administration Services for Non-DoD Organizations

20-501 General. Contract administration services similar in nature to those being performed for Department of Defense organizations may be performed also for other organizations pursuant to the procedures in this part. These services include quality assurance, engineering support, production progressing, pre-award surveys, price/cost analysis, termination, property administration, plant clearance, industrial security, small business industrial labor relations, transportation, contractor payment, and equal employment opportunity contract compliance review. A more detailed listing of tasks involving most of the above services is contained in 1-406.

20-502 Procedures for Performance. Department of Defense procedures will be utilized in performing contract administration services for other than Department of Defense organizations. However, the Departments may, on an exception basis and in accordance with Departmental procedures, enter into formal agreements with non-Defense organizations to provide for use of requested non-Defense procedures. This authority to enter into such agreements shall not be delegated below the level of the Head of the Contracting Activity.

20-503 United States Government Departments, Agencies and Corporations. Department of Defense contract administration services components shall, upon direct request, provide contract administration services to:

(i) the National Aeronautics and Space Administration in accordance with the DoD-NASA Agreement (DoDI 5030.42); and

(ii) other United States Government Departments and Agencies to the maximum extent permitted by available resources. Requests for services from U.S. Government agencies other than NASA may be declined on a case-by-case basis if resources are inadequate to accomplish delegated tasks, provided the decision is made by an official above the level of the contract administration office.

20-504 Department of National Defence Production (Canada). In accordance with Section VI, Part 5, Department of Defense components shall upon direct request, provide contract administration services to the Department of National Defence Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 20-505.

20-505 Foreign Governments and International Agencies.

20-505.1 *Performance of Services in the United States.* Department of Defense contract administration services components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

20-505.2 *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Control Administration Services Region (DCASR), New York, N.Y., which is the designated CCP. The CCP will:

(i) determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;
(ii) determine that the services requested are consistent with Department of Defense mutual security program policies (Questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));
(iii) assure that the reimbursement arrangements are consistent with 20-506;
(iv) determine that the requested services can be provided, and acknowledge receipt of the request;
(v) distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

20-505.3 *Performance of Services Outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

20-506 Reimbursement.

(a) Except as noted in (b) and (c) below, reimbursement for services shall be required from non-DoD organizations covered by this part at the current standard rate determined by the Assistant Secretary of Defense (Comptroller).

(b) Reimbursement is not required for quality assurance, inspection, and contract audit services under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

(c) Reimbursement is not required for services performed under contracts awarded by the Small Business Administration in accordance with 1-705.5.

(d) Requests for exceptions other than those noted in (b) and (c) above shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

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Part 6—Contract Administration Services by non-DoD Organizations

20-601 General. When contract administration services are not available from U.S. Department of Defense components, performance of these services may be requested from other organizations of the Federal Government and from foreign governments and international organizations.

20-602 Request for Services. Unless otherwise specified in a formal agreement, Department of Defense requests for services will not specify performance procedures but will accept the contract administration services procedures normal to the performing organization.

20-603 Payment for Services Rendered. Department of Defense components shall pay for services rendered at the rate established by the performing activity for such services, except where formal agreements provide for reciprocal performance without reimbursement. When services are requested from foreign governments, and international organizations, DoD components should check with the Office of the Assistant Secretary of Defense (Comptroller) to determine whether any reciprocal agreements are in effect which would preclude payment for services requested.

20-604 Department of National Defence Production (Canada). Performance without charge of contract administration services by the Department of National Defence Production (Canada) for the U.S. Department of Defense components is provided for in Section VI, Part 5.

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Part 7—Assignment of Contract Administration

20-701 Policy. It is the policy of the Department of Defense to make maximum use of the contract administration offices established by the Defense Contract Administration Services and by the Military Departments under the Plant Cognizance Program for the performance of contract administration functions (see 1-406). Except as otherwise prescribed in this Regulation, contracts shall be assigned for performance of all contract administration functions.

20-702 Responsibilities.

20-702.1 *Military Departments.* Each Military Department shall limit the retention in the purchasing office of contract administration functions, or the assignment of additional functions to contract administration offices, to unusual cases when the benefits are clearly demonstrable. As a minimum, approval at a level above that of the individual contracting officer shall be required.

20-702.2 *Purchasing Office.* Except where the purchasing office retains the administration of the contract, it shall enter on the contract the name and address of the office designated to administer the contract. Except as provided in 20-703, that office shall be the contract administration office listed in the DoD Directory of Contract Administration Services Component (DoD 4105.59-H). A disbursing office shall be designated for each contract in accordance with 20-706.

20-702.3 *Contract Administration Office.* The contract administration office shall:

(i) be responsible for assuring compliance with the terms of the contract as to contract administration functions listed in 1-406 (but see 20-703);

(ii) serve as a focal point for all inquiries regarding status of deliveries and production, quality of material, and other contract administration matters;

(iii) keep the purchasing office and other interested activities advised of all pertinent matters related to the administration of the contract; and

(iv) assign supporting contract administration when required.

20-703 Retention of Contract Administration by the Purchasing Office.

20-703.1 *General.* When field contract administration functions are not required, contracts shall be retained for administration by the purchasing office. When any field contract administration service is required, the contract will be assigned for administration regardless of dollar value (however, see 20-703.3).

20-703.2 *Contracts for Special Categories of Supplies or Services.* The purchasing office may retain responsibility for administration of contracts listed below:

(i) contracts of or in support of the National Security Agency;

(ii) contracts for coal or bulk petroleum;

(iii) research and development contracts covered under 4-101(a)(1), (2), (3), (4) and (5);

(iv) grants (see 4-108);

(v) contracts for flight training;

(vi) contracts for headstones and gravemarkers;

(vii) contracts for industry technical representatives;
(viii) contracts for consultant support services;
(ix) geodesy mapping, air charting, and information center contracts;
(x) base, post, camp, and station purchases (see 20-703.1);
(xi) contracts for operation or maintenance of, or installation of equipment at, radar or communications network sites, *e.g.*, SAGE BMEWS, JCSAN, WHITE ALICE, etc;
(xii) communications service contracts;
(xiii) contracts for installation, operation and maintenance of spacetrack sensors and relays;
(xiv) Dependents Medicare Program contracts;
(xv) stevedoring contracts;
(xvi) contracts for construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;
(xvii) architect-engineer (A-E) contracts;
(xviii) contracts for Airlift and Sealift—Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts;
(xix) contracts for subsistence supplies:
(xx) ballistic missile site contracts—supporting administration of these contracts may be performed at missile activation sites during the installation, test, and checkout of the missiles and associated equipment; and
(xxi) contracts for operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

To avoid duplication of field contract administration capability, except for the performance of (xviii) and (xx) above, contract administration personnel from the purchasing office shall not be located at contractor's facilities. If field assistance from a DoD contract administration services component is needed in the administration of these contracts, such assistance will be requested by assignment of supporting contract administration to the contract administration offices listed in DoD Directory 4105.59-H as cognizant of the contractor's facility (facilities) at which the supporting contract administration function(s) is required. Specific instructions as to the assistance needed will be furnished. If field assistance is needed in the performance of the major portion of applicable contract administration functions, the contract will be reassigned to the cognizant contract administration office.

20-703.3 *Retention of Normal, or Assignment of Additional Functions.*

(a) The purchasing office may withhold, after consulting with the contract administration office when appropriate, specific contract administration functions on individual contracts when the performance of such functions can best be accomplished by the purchasing office (see 20-702.1).

(b) On individual contracts, it may be advisable for the purchasing office to delegate to the contract administration office functions which have not been designated in 1-406(c) as contract administration functions. Similarly, by individual contract or groups of contracts, authority may be delegated for contract administration offices to issue orders under the provisioning procedures contained in contracts, and to issue orders under Basic Ordering Agreements for such items and services as are identified in the schedule; *provided*, however, that such delegation has been approved by the Head of the Procuring Activity or his designee. Prior to issuing delegations under this paragraph, the purchasing office shall coordinate with the contract administration office to assure availability of resources for performing the additional functions. Except as already provided for under this paragraph and under 1-406, new or follow-on procurement by the contract administration office shall not be authorized.

(c) The purchasing office shall advise the contractor, the contract administration office, and other appropriate activities, in writing, of the functions withheld or additional functions assigned.

20-704 Supporting Contract Administration.

(a) Supporting contract administration (see 1-201.31), when required for administration of a portion of the contract being performed at a different location, shall be requested in writing of the contract administration office normally cognizant of each of the contractor's facilities in which the work is to be performed. The request shall be made by the office having contract administration cognizance for the contract. Individual requests for quality assurance and transportation support are not required in those cases where specific distribution of the contract was made pursuant to 20-401(d)(ii)(E). The request shall clearly state the applicable functions to be performed. A copy of the pertinent contractual and other necessary documents shall be attached thereto. Generally, the office for performing supporting functions shall be selected from the list in DoD 4105.59-H. However, in special circumstances (for example, when contractor's work site is a military base), a component of a military command not listed in DoD 4105.59-H may be selected to perform supporting contract administration when prior coordination between the offices concerned has indicated that such an arrangement is feasible and that adequate resources are available.

(b) The prime contractor is responsible for managing his subcontract program, and the contract administration office function normally is limited to evaluating the effectiveness of the prime contractor's management of this program. Therefore, except when performance of contract administration duties by Government personnel is authorized elsewhere in this Regulation, administration of subcontracts by the Government shall not be assumed unless undue cost to the Government would otherwise be incurred or successful completion of the contract is threatened. This in no way precludes the contracting officer from designating under major system acquisitions (as defined in 1-201.41) certain high risk or critical subsystems or components thereof as requiring the application of special management attention in addition to assignment of support administration. Such special management attention shall be fully consistent with the practice of calling upon the contract administration organization cognizant of a facility to perform such contract administration functions as are required at that facility.

(c) Where supporting contract administration is required on a contractor purchase order or subcontract which includes FMS requirements, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

20-705 Reserved.

20-706 Designation of the Disbursing Office. The purchasing office shall designate in the contract a disbursing office in accordance with (a), (b), (c), or (d) below:

(a) *Defense Contract Administration Services Disbursing Office.* Contracts assigned to an office of Defense Contract Administration Services for administration shall also specify disbursement by the cognizant Defense Contract Administration Services Regional Office if funded with DoD funds (i.e., department codes 17 (Navy), 21 (Army), 57 (Air Force), 97 (OSD, including Defense Agencies), and 43 (Civil Defense). For any other department or agency funds, the payment office serving that department or agency must be cited for the portion of the contract covered by non-DoD funds, even though the contract is otherwise wholly administered by the DCASR.

(b) *Other Disbursing Office(s).* Any contract not assigned to a Defense Contract Administration Services Office for administration shall designate a disbursing office in accordance with Departmental or Agency regulations. Such contract, if issued for requirements of more than one Department or Agency, may provide for payment by more than one disbursing office.

(c) *Disbursement for Air Force Missile Propellant Contracts.* The Department of the Air Force shall retain the disbursement function on all contracts for Air Force missile propellants.

(d) Disbursements for NATO AEW contracts citing fund account 97X6147 will be assigned to ESD Accounting and Finance Office, Hanscom AFB MA.

20-707 Reassignment of Contract Administration and Disbursing Responsibility. Changes in assignment on account of changes in place of manufacture or for other reasons shall be made by the procuring contracting officer by issuance of a unilateral contract modification. However, when a contract is initially incorrectly assigned, a contracting officer at the contract administration office receiving such assignment shall issue a unilateral contract modification reassigning the contract to the correct contract administration office and disbursing office. Also, when a contractor is reassigned to another contract administration office on account of transfer of plant cognizance, establishment or disestablishment of a contract administration office, or change in geographical assignment of a contract administration office, the contract administration office having cognizance of the contract prior to the reassignment shall issue a unilateral contract modification reassigning the contracts to the newly assigned contract administration office and disbursing office. In accomplishing any change of assignment, the contract administration office shall assure that the contract and files and necessary supporting documents are transmitted to the correct contract administration office.

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Part 8—Correspondence and Visits

20-801 Contract Correspondence.

(a) Generally, correspondence relating to contract administration functions shall be forwarded to the contractor via the cognizant contract administration office with a copy supplied for the file of the contract administration office. If, under urgent circumstances, direct correspondence is necessary, a copy shall be forwarded concurrently to the contract administration office.

(b) A copy of pertinent correspondence between the contract administration office and the contractor shall be sent to the purchasing office.

20-802 Visits to Contractor's Plants.

(a) *Planning Visits.* When visits to a contractor's facility are planned, the contract administration office shall be provided the following information prior to such visits:

(i) name, official position, and activity represented by visitor;
(ii) date of intended visit;
(iii) name and address of contractor and personnel to be contacted;
(iv) contract number and program involved, and purpose of visit;
(v) security clearance (If access to classified information will be involved, the contractor must be given advance notice, in writing, as required by the Industrial Security Regulation (DoD 5220.22—R);
(vi) if desired, a request that a representative of the contract administration office accompany the visitor (In the absence of such a request, the contract administration office may elect to have a representative accompany the visitor.).

(b) *Discussions With the Contractor, and Reporting Results of Visits.* Agreements reached with the contractor by authorized personnel during a visit shall be reduced to writing and a copy furnished to the contract administration office if it is affected. If the contract administration office was not represented, visitors will furnish to that office the status of any unresolved problems, and information on data requested from the contractor.

20-803 Evaluation of Contract Administration Offices. The on-site inspection, surveillance or evaluation of contract administration activities in the performance of their assigned functions shall only be accomplished by or under the direction of the parent Department or the Office of the Secretary of Defense organization element having this responsibility.

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Part 9—Corporate Administrative Contracting Officer

20-901 Scope. This Part sets forth (i) policy and procedures for the assignment of a single Corporate Administrative Contracting Officer (CACO) to deal with corporate management for selected multi-division contractors and (ii) duties and responsibilities of the assigned CACO, including his relationship to other contracting officers, particularly those within other contract administration organizations.

20-902 Policy. Many contractors with more than one operational location (divisions, plants, subsidiaries, etc.) have corporate-wide policies, procedures, and activities requiring Government review or approval which may be more efficiently performed by a single administrative contracting officer who has been delegated appropriate authority. To promote effectiveness and consistency in the performance of contract administration service functions, a CACO may be designated and given responsibility for performing functions as provided herein.

20-903 Assignment. A CACO should be established for only those contractors with at least two locations where resident ACO's are assigned. For the purpose of this paragraph, a non-resident ACO will be considered the equivalent of a resident ACO if at least 75% of the ACO's effort is devoted to a single contractor. CACO functions will be performed by either a designated resident ACO or a full-time CACO who should be in residence at either the corporate headquarters office or at one of the major plant locations. Other important considerations for determining the location of the CACO should include the geographic locations of the corporate office and the Contract Audit Coordinator (CAC). If a particular corporate complex does not meet the criteria for the establishment of a CACO, but a Department or Agency believes a CACO assignment is required, such determination requires approval of the Secretary of the Department (*see 1-201.15*) or his designee. Decisions to initiate or discontinue a CACO should consider such factors as (i) the benefit to be derived by the Government from coordination and liaison at the corporate level; (ii) the volume of Government sales; (iii) the degree of control exercised by the contractor's corporate office over Government-oriented lower tier operating elements; and (iv) the impact of corporate policies and procedures on these elements. CACO's shall be assigned as follows.

(a) When all divisions of a corporate entity are under the contract administration cognizance of a single Department, that Department shall be responsible for assigning the CACO.

(b) When a corporate entity has divisions under the contract administration cognizance of more than one Department, CACO assignments shall be determined by the Departments concerned. When agreement cannot be reached, the matter shall be referred to the Director, Contracts and System Acquisition, Office of Under Secretary of Defense, Research and Engineering, for resolution. The primary criterion determining the Department responsible for assignment of a CACO will be the unliquidated dollar balance of contracts being administered. When a CACO has been assigned, reassigned, or discontinued, that Department shall notify the Director of the Defense Logistics Agency, Attention: DLA-AO, in order that current information concerning CACO assignments may be included in the DoD Directory of Contract Administration Services Components (DoD 4105.59H).

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20-904 Duties and Responsibilities of the CACO.

(a) Duties and responsibilities of the CACO shall be performed on a corporate-wide basis. The specific contract administration functions in 1-406 to be performed by the CACO shall be determined by the Departments concerned. When agreement cannot be reached, the matter shall be referred to the Director (C&SA) OUSD (R&E), for resolution.

(b) The CACO shall be responsible for the procurement determination of final overhead rates for cost reimbursement type contracts (3-700); the establishment of advance agreements or recommendations on corporate/home office expense allocations; and for the negotiation of advance agreements for independent research and development costs and bid and proposal costs (15-107, 15-205.3, and 15-205.35) except when this responsibility is assigned in the master list published annually in a Defense Acquisition Circular for Tri-Service Departmental negotiation. Departmental Tri-Service contracting activities may delegate such negotiations to established CACO's. The CACO shall make full use of the Defense Contract Audit Agency financial and advisory accounting services including (i) maintaining close liaison with his audit counterpart, the CAC , especially when the acceptability of corporate-wide policies are concerned; and (ii) utilizing advisory audit reports as contemplated by 3-705.

(c) The CACO shall (i) advise divisional ACO's and DCAA of important matters under consideration, and determinations made, and (ii) solicit their advice and participation when appropriate. In addition, the CACO shall solicit advice and consultation from the Indirect Cost Monitoring Office to assure consistent treatment of individual cost issues.

ADMINISTRATIVE MATTERS

Part 10—Monitoring Contractors' Costs

20-1001 Scope. This Part sets forth guidelines for monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business. These procedures are intended to eliminate duplication in monitoring contractors' costs.

20-1002 Purpose. To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. Contractors are responsible for managing and controlling their direct and indirect costs. However, DoD components need to systematically monitor the management of such costs to assure that contractors are fulfilling their responsibilities.

20-1003 Application. A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at:

- (i) all major contractor locations where—
  - (A) sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm-fixed-price and fixed-price-with-escalation contracts;
  - (B) the Government's share of indirect costs for such sales is at least 50% of the total of such indirect costs;
  - (C) a Contract Administration Office has been established at the location, and
  - (D) the location is not CWAS qualified (see 3-1000),

  and at
- (ii) other critical locations with significant Government business where specifically directed by the HPA.

Decisions to implement or terminate cost monitoring should be based upon sound estimates of Government business for the coming year and not upon minor interim volume fluctuations. This does not preclude action to start or stop the program during a given year where there is a significant change in volume and the anticipated new level of business is expected to remain stable for a reasonable period of time.

20-1004 Designation of a Cost Monitoring Coordinator. A member of the Contract Administration Office (CAO) cognizant of a contractor location shall be designated as the Cost Monitoring Coordinator (CMC) after the location has been identified as qualified under 20-1003 for application of this program. Depending upon the circumstances, the designee may be the ACO or any other staff member whose normal function relates to evaluation of contractor performance.

20-1005 Responsibilities of the Cost Monitoring Coordinator.

(a) In performing his assigned contract administration duties, the Plant Rep/ACO acts as a high-level manager calling upon the various specialists established within DoD to review and report on those areas that fall within their respective areas of expertise. It is not intended that the Plant Rep/ACO duplicate the functional capabilities or work of such specialists. Likewise, the CMC in the contract administration organization will fully utilize the work of these specialists in monitoring contractor costs through coordination with their various organizations.

(b) The CMC shall be responsible for:

(i) preparing and maintaining an annual consolidated written plan and schedule for reviewing contractor operations from coordinated long-range plans established by each team member including the DCAA auditor. This composite plan and schedule will assure cost monitoring responsibilities are being fully implemented and that the technical and professional expertise of various organizational units of the CAO are used without duplication of effort or skills;

(ii) coordinating the performance of the cost monitoring effort of the organizational units of the CAO;

(iii) coordinating the cost monitoring efforts of the CAO with those of the DCAA auditor;

(iv) advising the head of the CAO of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs which may not be allowed if incurred;

(v) coordinating CAO actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts;

(vi) coordinating actions to assist the CAO, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related data, and obtaining the assistance of the head of the CAO when such access is being denied or impaired;

(vii) maintaining an inventory of CAO, DCAA, and other Government reports on significant issues relating to monitoring costs;

(viii) continuously monitoring the status of recommendations made to the contractor concerning cost performance stemming from all Government reports. While contractors are responsible for managing their direct and indirect costs, the CMC monitors the contractors' effort through this task. In the event agreement is not reached on a recommendation and the cost or principle involved is sufficiently important, the CMC should prepare for the ACO's consideration, a *Notice of Intent to Disallow or Not Recognize Costs* (see 15-206);

(ix) maintaining current organizational charts of the operations identifiable to the contractor's functional centers of his cost control systems.

(c) The plan required by (i) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at an early stage so that preventive action can be taken. Reviews required by DAR and the contracting officer must be included in the plan.

20-1006 DCAA Auditor Responsibility. DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting and financial advisory service regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. The auditor is responsible for submitting information and advice based on his analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs, as well as for reviewing the financial and accounting aspects of the contractor's cost control systems. The auditor is also responsible for performing that part of reviews and such analysis which requires access to the contractor's financial and accounting records supporting proposed costs or pricing data. This does not preclude the Program Manager, PCO, Plant Rep/ACO, or their technical representatives from requesting any data from, or reviewing records of, the contractor (such as CSCS/C data, lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities. The CAO will utilize the auditor's services whenever such expertise is needed, particularly regarding the contractor's financial management reports, books, and records

20-1007 Procedure.

(a) *Selecting Operations for Review*. It is not possible to review all elements of a contractor's entire operation each year. Therefore, the CMC, together with the auditor, is to select for review those operations that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs. To select these cost-risk areas on a sound and orderly basis, an overview must first be obtained of the contractor's entire operation. Before the beginning of each Government fiscal year, the CMC should arrange for a joint meeting between CAO, DCAA, and other directly interested Government representatives to coordinate selection of the areas to be reviewed during the coming year. The following data will be used in the selection process:

(i) the contractor's forecasts for the coming year supporting direct and indirect costs by functional centers of his cost control system and the results of the latest survey performed of such systems (DCAA responsibility);

(ii) detailed organizational charts for the contractor's entire operation (CAO responsibility);

(iii) an outline of the contractor's accounting system to understand the flow of costs by function (DCAA responsibility);

(iv) the determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(v) a complete list of recent reviews and audits performed by CAO, the DCAA, and other Government representatives that would effect the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (CAO responsibility);

(vi) evidence of under and overstaffing (CAO-DCAA responsibility);

(vii) significant departures from established contractor productivity standards (CAO responsibility);

(viii) major financial variances from forecasts in prior years (DCAA responsibility);

(ix) evidences of idle or underused capacity (CAO-DCAA responsibility).

(b) *Planning for Reviews*. The primary purpose of the joint meeting described above is to develop a mutually acceptable annual plan for reviewing the contractor's operation. The plan should provide coverage for each significant operational area of the contractor over a period of two to three years and should be modified to reflect any changed conditions during subsequent meetings. The schedule and resource limitations of participating organizations will be considered in preparing the annual plan. The plan will identify the organizations having the primary responsibility for performing the reviews:

(i) the CAO will review the technical aspects of contractor operations requiring minimal or no access to contractors' financial and accounting records and will sign reports on these reviews;

(ii) DCAA will review the financial and accounting aspects of contractor operations requiring minimal or no technical considerations and will sign reports on these reviews;

(iii) the CAO and DCAA will jointly perform reviews requiring significant CAO and DCAA expertise. Reports resulting from these reviews will be signed by the heads of the respective local organizations.

Some operations reviews such as the purchasing (CAO) and estimating system reviews (DCAA) are assigned to the responsible reviewing organization by DAR. These assignments will continue to be recognized. All others will be performed according to the above criteria. The annual plan will be formally approved by heads of the local CAO and the DCAA resident offices.

(c) *Joint Review*.

(1) *Objective*. The objectives of joint CAO-DCAA reviews of contractor operations are:

(i) to optimize the utilization of DCAA-CAO personnel in performing selected operations reviews; and

(ii) to generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the CAO to improve the effectiveness and economy of contractor operations.

(2) *Exit Conference with Contractor*. During the course of the review, there may be several informal briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconceptions that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain CAO/DCAA findings, conclusions and recommendations. On joint reviews, the ACO or his representative shall arrange the exit conference with the contractor. Both CAO and DCAA will be represented at the exit conference.

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(d) *Reports*. All reports prepared separately or jointly by DCAA or CAS personnel will be forwarded through the ACO to the contractor. While these review reports are advisory to the ACO, the ACO has responsibility to assure that (i) appropriate recognition is given to the results of such reviews in any contract negotiations and (ii) that the contractor implements appropriate corrective actions. In event of any dispute with the contractor, the ACO has the ultimate responsibility and authority to effect final settlement.

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SECTION XXI

PROCUREMENT MANAGEMENT REPORTING SYSTEM

21-000 Scope of Section. This Section prescribes uniform reports which are required to be prepared by contracting and contract administration offices in order to meet the requirements of the Federal Procurement Data System and provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

Part 1—Individual Procurement Action Report (DD Form 350)

21-100 Scope of Part. This Part prescribes the reporting on DD Form 350 (set forth in F-200.350) of individual actions taken in connection with the contracting for supplies and services (including construction).

This reporting requirement has been assigned Report Control Symbol: DD I&L(M) 1014.

21-101 Purpose. DD Form 350 provides essential procurement statistics on a uniform basis for required recurring and special reports to the President, the Congress, the Department of Labor, the Office of Emergency Preparedness, the General Accounting Office, the Small Business Administration, and other Federal agencies. It provides figures for measuring the extent to which goals are achieved in the Department of Defense Socio-Economic Program and Management Improvement Program, and also provides significant data for other acquisition policy and management control purposes.

21-102 Applicability and Coverage.

(a) DD Form 350 shall be prepared (*typewritten*) for each debit or credit contracting action in excess of $10,000 which is executed by a component of the Department of Defense except as indicated in (b) below. At the option of the Headquarters of the Military Departments or Defense Logistics Agency, contracting offices may submit an automated record in lieu of a DD Form 350, *provided* that the contract file reflects such information on a separate worksheet or print-out for each individual contracting action in excess of $10,000. Multiple reports may be required for a single action if:

(i) more than one type of contract is involved (see 21-129);

(ii) both the Foreign Military Sales Program and other programs are involved (see 21-123(g));

(iii) the set-aside portion of a contract is awarded by supplemental agreement to a labor surplus area or small business concern which has obtained the non-set-aside portion (see 21-115(c) and 21-125(a));

(iv) the total quantity of an item is set-aside for small business firms and a portion of the total is further set-aside for small business concerns which are also labor surplus area firms (see 1-706.7); or

(v) a prospective price redetermination contract is awarded on the basis of price competition (see 21-126(c)(5)(iii)).

(b) DD Form 350 shall not be prepared for the following contracting actions in excess of $10,000:

(1) Reserved.

(2) Orders placed against indefinite delivery type contracts entered into by the Defense Fuel Supply Center and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each contract shall be reported on a separate DD Form 350 and in the appropriate fiscal year by the Defense Fuel Supply Center and Military Sealift Command for their respective contracts. If an indefinite delivery type contract is awarded by the above organizations in one fiscal year but is not effective until a subsequent fiscal year, the DD Form 350 shall be submitted on 1 October of the fiscal year in which the contract is effective.

(3) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange and Motion Picture Services. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(4) Transactions for leased communications placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions.

(5) Transactions for purchase of land, or rental or lease of real property.

(6) Awards to GSA stock and through the GSA Consolidated Purchase Program.

(7) Transactions which involve Government bills of lading or transportation requests.

(8) Awards to individuals in support of dependents schools, *e.g.*, principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350. On this consolidated DD Form 350, enter Code 025039, Dependents School Personnel, in Item 6, and enter the appropriate activity symbol, current fiscal year and five zeros in Item 2A, and enter the number of actions involved in Item 7B. Awards to minority group members shall be consolidated separately and the cumulative dollar amount reported on a separate DD Form 350 with entry of Code A in Item 5A. On each of the consolidated forms, enter the number of awards to women in Item 9C. If none, enter *NONE*.

(9) Orders placed against indefinite delivery-type contracts entered into by the Military Traffic Management Command for stevedoring services. Orders under each such contract shall be consolidated quarterly and the cumulative dollar amount reported on a single DD Form 350.

(10) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract. All DD Form 350 items, except Items 1A, 4, 10A, 24, 25, and 26, shall be completed on each master DD Form 350. Each master DD Form 350 shall also include an attachment which lists Items 1A, 4, 10A, 24, 25, and 26, data for individual actions against each contract.

(11) Orders placed by the U.S. Army Troop Support Agency for resale items in excess of $10,000 against Brand Name Contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. These transactions shall be reported on TSA Form 203-R in accordance with instructions on that form. As a minimum, TSA Form 203-R shall provide for reporting

of total actions and dollar amounts monthly, categorized by place of performance, negotiation authority, and large or small business. This provision is applicable to U.S. Army Troop Support Agency activities only.

(12) Vouchers processed by the U.S. Army Procurement Agency, Europe (USAPAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 for each of Item 10A Codes S111, S112, S114, S119 and S205. On these consolidated reports enter in Item 2A the activity address number of the reporting office, XX for fiscal year, and five zeros; enter in Item 6 Code 666666, European Utility Companies; and enter in Item 7B the number of actions that were consolidated. This provision is applicable only to activities under the jurisdiction of the U.S. Army Procurement Agency, Europe.

(13) Grants for basic research with educational institutions and other nonprofit organizations. (See 4-108.)

(c) Contracting Action refers to any contractual action to obtain supplies, services, or construction, which obligates or deobligates funds, except as indicated in (2) below.

(1) The term includes preliminary contractual instruments and letter contracts; definitive contracts including notices of award; purchase orders; job orders; task orders; delivery orders; contingency orders; administrative notices; communication service authorizations (CSA's); production lists; priced exhibits; and other orders against existing contracts including debit and credit actions that modify a contract, such as modifications, change orders, supplemental agreements, cancellations, and terminations.

(2) The term does not include contracts which do not obligate funds or do not name a fixed quantity, such as requirements contracts, indefinite quantity contracts, even though these may obligate funds for minimum quantities (orders against such contracts, however, are to be reported as contracting actions), requisitions, and other means of transferring supplies or services within, or between, the Departments or the contracting agencies of the Department of Defense. Indefinite delivery type contracts of the Defense Fuel Supply Center and the Military Sealift Command are an exception to this provision and shall be reported in accordance with (b)(2) above.

(d) The coverage prescribed in (a) above shall include contracting actions against:

(i) appropriated funds;
(ii) contract authorizations;
(iii) stock or other revolving funds which are replenished or reimbursed from appropriated funds;
(iv) appropriated funds transferred to the Department (such as Military Assistance Program funds); and
(v) appropriated funds obligated pursuant to the provisions of Public Law 85-804 (see 21-123).

(e) For contracts placed with the U.S. Small Business Administration pursuant to the Small Business Act - Public Law 85-536 Section 8(a) - enter in Item 6 after "Company Name" the name of the concern which will be performing under the contract and enter "SBA" after "Division Name". The address and company code shall be that of the performing concern. Also enter the PII number in Item 2A (*e.g.*, DAAHO1-78-F0260), Code A in Item 5A, Code 4 in Item 12, Code 6 in Item 13, Code 5 in Item 15, Code J (or L if place of performance is outside the U.S.) in Item 16, Code 17B in Item 17, Code 7 in Item 18, and enter the appropriate codes for all remaining items.

21-102.1 *Coding Implementation.* The Headquarters of the Military Departments and Defense Logistics Agency may issue implementing instructions pertinent to the coding for data processing of the data elements contained herein.

21-103 Due Date and Distribution.

(a) In addition to instructions given in (b) and (c) below for contracting offices of specified departments and agencies, the following instructions are applicable to all contracting offices.

(1) For the month of September only, prescribed due dates are extended 10 additional calendar days in order to assure complete coverage of all contracting transactions occurring in the fiscal year.

(2) Corrected reports, if required, shall be distributed to all recipients of the original reports. To correct an erroneous report, two DD Forms 350 are required (see 21-109).

(3) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item 11) and System or Equipment Code (Item 10B) may be omitted and the word "classified" inserted in lieu thereof. Similarly, the Estimated Completion Date (Item 25) may be reported as "classified" if this item requires security classification. Should further security classification of items on DD Form 350 be deemed necessary by the reporting office, a communication relating the circumstances justifying such classification shall be submitted to Directorate for Information Operations and Reports, Washington Headquarters Services, Washington, D. C. 20301, through the Departmental or Agency channels prescribed in (b) below. In no case shall the term "classified" be used in lieu of the dollar amount in Item 26.

(b) Except for the Defense Fuel Supply Center, the signed original of each DD Form 350 shall be forwarded within 3 working days after the action shown in Item 24 as shown below. For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 15 working days. (*Letter of Transmittal is not required.*)

(1) *Army* contracting offices (except for Engineer Civil Functions contracting offices) to HQDA (JDHQ-SV-W-P) Washington, D.C. 20310. Additional copies of each DD Form 350 shall be forwarded to the appropriate Head of the Contracting Activity when directed by Departmental instructions.

(2) *Army Engineer Civil Functions* contracting offices to HQDA (DAEN-PRP) Washington, D.C. 20314. An additional copy shall be sent to this addressee.

(3) *Naval* field purchasing offices to the Head of the Contracting Activity from which purchase authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC); ASO and SPCC to the Naval Supply Systems Command Headquarters. Heads of Contracting Activities shall edit and correct these reports and transmit them together with other DD Form 350 reports prepared by the Contracting Activity to the Headquarters, Naval Material Command, Washington, D. C. 20360, Attn:

MAT 08C14. An additional copy of DD Form 350 shall be forwarded to the Headquarters, Naval Material Command, Attn: MAT 08C2, when required by:

(i) NPD 1-403.61 as the Report After Execution of Contract; and

(ii) NPD 3-306.53(f)(3) as a report of contracting under a Class Determination and Findings.

(4) *Air Force* contracting offices as directed by HQ USAF. All contracting offices except those under AFLC and AFSC shall forward two copies to the appropriate major command headquarters staff contracting office or division. When contract items requiring provisioning actions are involved, a copy of the DD 350 shall be forwarded to the provisioning contracting office.

(5) *Defense Logistics Agency* contracting offices to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Attn: DLA-PA, Alexandria, Va. 22314.

(6) All other contracting offices of the Department of Defense shall forward the signed originals to HQDA (JDHQ-SV-W-P) Washington, D.C. 20310.

(c) Contracting offices shall prepare DD Form 350 for procurement actions in excess of $10,000 which are reportable in accordance with 21-102 and are accomplished by contract administration offices. To facilitate such reporting, the ACO within one working day after the action date shall transmit to the contracting office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY". The purchasing office shall prepare and submit the DD Form 350 within 3 working days after the receipt of the "REPORTING COPY."

21-104 Reserved.

21-105 Item 1A, Report Number (Current).

(a) *All Components*. Each contracting office which is identified by a separate number in the Item 5 code block shall enter a four-digit alpha-numerical number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by a dash and the last two digits of the fiscal year. The date of the action entered in Item 24 must reflect a date within the same fiscal year as that assigned to the report number. Numbers with less than four significant digits shall be preceded by zeros; *e.g.*, the fourth report in fiscal year 1980 would be numbered 0004-80. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(b) *Navy*. When DD Form 350 is submitted as a Report After Execution of Contract, enter the RAE number required by NPD 1-403.53(a)(5) immediately following the report serial number.

(c) *Defense Logistics Agency*. Subsistence contracting offices of the Defense Personnel Support Center shall use two blocks of numbers:

(i) perishable subsistence actions shall begin with 0001, and

(ii) nonperishable subsistence with 5000.

21-106 Item 1B, (No title). This item is for optional use by DoD components.

21-107 Item 1C, Report Number (Previous). Enter the report number of the last previous DD Form 350 relating to the same contract.

21-108 Item 2, Contract Number. Enter only Department of Defense contract numbers in Subitem A; contract numbers for all other Federal agencies shall be entered in Subitem B. For orders under contracts awarded by other Federal Agencies (*i.e.*, GSA Federal Supply Schedule, Government Printing Office, and Veterans Administration contracts), enter the Federal Agencies' contract number in Subitem B. For orders covering direct purchases from other Federal agencies, such as Federal Prison Industries, Tennessee Valley Authority, Veterans Administration, Treasury, etc., enter the Defense delivery order number in Subitem A, *e.g.*, DAAH01-78-F0260. If entry is in Subitem A, then Subitem B must be blank, and vice versa. .

(a) Subitem A(1). Activity - Enter the first six characters of the contract number which identify the activity listed in Appendix N. Activity symbols assigned prior to the initiation of Section XX, Part 2, shall be expressed as a six character symbol. For Army, the five digit fiscal station code shall be prefixed by the letter A, thus 01-002 for Anniston Army Depot shall be reported as A01002. Navy symbols of less than five digits shall be prefixed by zeros, *e.g.*, 383 for ASO shall be reported as N00383.

(b) Subitem A(2). FY - Enter the last two digits of the fiscal year in which the basic contract number was initially assigned (not the fiscal year of the immediate action); *e.g.*, 78 for fiscal year 1978. If the fiscal year is not known for contract numbers assigned prior to the initiation of Section XX, Part 2, or cannot be ascertained after a reasonable search, enter "XX".

(c) Subitem A(3). Serial No. - Enter as a five-position entry, the serial number assigned to the contract. For serial numbers assigned in accordance with Section XX, Part 2, the first character shall be type of instrument as described in 20-203.1(iii). The remaining four characters shall be the serial number assigned in accordance with 20-203.1(iv). For other contract numbers, *i.e.*, those numbered under exceptions permitted by 20-201, the serial number also shall consist of five characters, *e.g.*, 00001, 00124, 01356, 71284, etc. If a serial number has not been assigned, enter five zeros. Do not enter other supplementary procurement instrument identification numbers in Subitem A(3); such numbers shall be entered in Item 4.

(d) Subitem B. Other - For orders under contracts awarded by other Federal agencies, enter the contract number of the Federal Agency as it appears in the contractual instrument; *e.g.*, GS-00S-27773, GP-16251A, V979P-2048A, etc.

21-109 Item 3, Correction of Previously Reported DD Form 350.

(a) If it is necessary to correct an error on a previously reported DD Form 350, two DD Forms 350 are required.

(1) *Code 1 Corrected Entry*. Enter the correct data in all items. Entries in Item 1A and Item 24 shall be the same as those reported on the report being corrected, except when such items are the subject of the corrections being made.

(2) *Code 2 Reversing Entry*. Enter data in all items exactly as in the incorrect report except that the dollar amount shown in item 25 shall be the reverse of the amount originally reported; that is, if the amount of the incorrect report was a debit, the amount of the reversing entry shall be a credit and vice versa. Entries in Item 1A and Item 24 shall always be the same as those reported on the report being corrected.

(b) The item numbers being corrected will be noted on both the reversing and correcting reports in the spaces provided.

21-110 Item 4, Modification Number and Other Identification. Enter the supplementary procurement instrument identification numbers assigned in accordance with 20-204 for letter contract modifications, orders against indefinite delivery type contracts and basic ordering agreements, contract change notifications, change orders, supplemental agreements, and other modifying actions. For those numbered under exceptions permitted by 20-201, enter the identification and number such as Mod. 35; C.O. No. 2; *etc*.

21-111 Item 5, Purchasing Office. Enter sufficient detail to establish the identity of the purchasing office submitting the report. Enter in the Item 5 code space, the number or symbol assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

21-111.1 *Item 5A, Small Disadvantaged Business Concern* (see 1-701.2).

(a) Enter Code A if the award was made to a small disadvantaged business concern in accordance with the representation required in 1-707.3(f).

NOTE: If Code A is entered, the contractor designated in Item 6 must be small business.

(b) Enter one of Codes B through F for all other awards.

(i) Enter Code B if there is no known small disadvantaged source. Also enter Code B for orders under contracts awarded by other Federal Agencies for which data are not readily available.

(ii) Enter Code C if there was a known small disadvantaged business concern but it was not solicited for a bid or proposal.

(iii) Enter Code D if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iv) Enter Code E if a small disadvantaged business concern was solicited but the low bid or proposal was not from such firm.

(v) Enter Code F if a small disadvantaged business concern was solicited, but was not awarded the contract for reasons other than those coded B, C, D, or E.

21-112 Item 6, Contractor Identification. Enter the complete name and office address (street, city, and state) of the concern or division of the concern involved. If the contractor is a division, enter first the name of the parent company, and then the name of the division, followed by the address of the division. For example:

Company Name: XYZ Company
Division Name (if any): Flight Propulsion Division
Number and Street: 1 Smith Road
City and State: Jonesville, Ohio
Zip Code

Enter in the Item 6 code space, the first six digits of the contractor code as shown in the Department of Defense Procurement Coding Manual, Volume II. If the contractor is not listed in the Manual, no code entry shall be made by the purchasing office. For contracts placed with the Canadian Commercial Corporation, enter "Canadian Commercial Corporation" after "Company Name" and enter the name of the concern performing under the contract after "Division Name". The address shall be that of the performing concern. The company code shall be that of the Canadian Commercial Corporation. For contracts placed with the U.S. Small Business Administration under the Small Business Act, see 21-102(e).

21-112.1 *Item 6A, DUNS CONTRACTOR ESTABLISHMENT NUMBER.* Enter the nine-position number assigned by Dun and Bradstreet, Inc., that identifies the contractor establishment receiving the award as shown in Item 6. This DUNS Contractor Establishment Number should be for the division or plant identified. For contracts placed with the Canadian Commercial Corporation, enter "20-889-1788" in Item 6A code. The DUNS Contractor Establishment Number is available from one of the following sources:

(a) The offeror's response to the solicitation;

(b) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable nine-digit number;

(c) If not provided by the successful offeror, the Federal Procurement Data Center (FPDC) DUNS Contractor Identification File, Alphabetical Listing shall be consulted. (This listing should contain all successful offerors receiving Federal prime contract awards over $10,000 since October 1, 1978); or

(d) If this listing has no entry for the establishment, the applicable nine-digit number shall be obtained by contacting a Dun and Bradstreet, Inc., representative at the FPDC via commercial telephone (215) 776-4388. All requests/requestors should provide the following information:

(i) Name of requesting contract office;
(ii) Contracting office location (city/town; state/country) and commercial telephone number (including area code);
(iii) Name of individual making the request;
(iv) The total number of requests, if more than one; and
(v) Contractor establishment name, street address (and/or P.O. Box), city/town, and state/country as displayed in Item 6.

(e) For foreign contractors other than the Canadian Commercial Corporation, the procedures in (c) and (d) above apply.

(f) If a DUNS number is still not available after all of the above methods are used, the report shall be submitted within the time limits required by 21-103(b) with Item 6A left blank.

21-113 Item 7, Principal Place of Performance.

(a) Enter the actual location (military installation; *e.g.*, Fort Knox, Kentucky, or the city and state, or foreign country) of the plant or place of business where the items will be produced or supplied or where the service will be performed. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, or place where a service is performed for the Government. If the location is the same as for Item 6, enter in the word "Same". Do not leave Item 7 blank. Also enter in the coding blocks, the military installation or city and state or foreign country codes shown for the contractor in the Department of Defense Procurement Coding Manual, Volume II. If the contractor's name is listed in the Manual, but for a different location than the one in Item 7, no entry shall be made in the code blocks.

(b) Regular dealers ship from stock, in which case the place of performance is the regular dealer's location. Regular dealers also ship from subcontractors who produce the items, in which case the place of performance is the subcontractor's location.

(c) If more than one location is involved, show the location involving the largest dollar amount of procurement. Do not show more than one location in Item 7. Report other locations on the reverse side or on an attached sheet.

(d) For construction contracts, report the actual site of construction.

(e) For architect/engineering contracts, report the planned site of the construction.

(f) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(g) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

21-113.1 *Item 7A, Reserved.*

21-113.2 *Item 7B, Reserved.*

21-113.3 *Item 7C, Multiyear Contracting.* Enter Code A if the action is a multiyear contract as defined in 1-322.1(a). Enter Code C if the action is not a multiyear contract.

21-114 Item 8, Subject to Statutory Reqirements.

Code in accordance with the provisions of the contract as follows:
Code A--Subject to Walsh-Healey Act, Manufacturer: Section XII—Part 6.
Code B—Subject to Walsh-Healey Act, Regular Dealer: Section XII—Part 6.
Code C--Subject to Service Contract Act: Section XII—Part 10.
Code E—Subject to Davis-Bacon Act: 18-702.1(a).
Code Z—Not subject to above statutory requirements. Also enter Code Z for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115 Item 9, Labor Surplus Area Preference.

(a) *Labor Surplus Area.* See 1-801.2 for definition. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 6, 7, or 8 is entered, the entry in Item 7 must be a city which on the date of the action is located within a labor surplus area (see 21-113(g)).

(b) *Code 1.* Reserved.

(c) *Code 2.* Partial Labor Surplus Area Set-Aside Preference. (See 1-804.) Enter this code if the action was awarded to a concern in a labor surplus area, wherein preference was given under partial labor surplus set-aside procedures, except if set-aside preference resulted from a combined Small Business/Partial Labor Surplus Set-Aside as set forth in subparagraph (g) below. If Code 2 is entered, Code 1A must be entered in Item 17.

(d) *Code 3.* Labor Surplus Area - Tie Bid Preference. Enter this code if the action was awarded to a concern in a labor surplus area and tie bid preference was given.

(e) *Code 4.* Reserved.

(f) *Code 5.* Not a Labor Surplus Area Preference Award. Enter this code if the action did not involve labor surplus area preference considerations as defined for Codes 2, 3, 6, 7, or 8. Also enter this code if a Labor Surplus Area Set-Aside results in an award under Group 7 to a Small Business concern which is not located in a labor surplus area (see 1-804.2).

(g) *Code 6.* Combined Small Business/Partial Labor Surplus Area Set-Aside (see 1-706.7). Enter this code when reporting the successful labor surplus portion of a combined set-aside. (See 21-102(a)(iv)). If Code 6 is entered, Code 1B or 17A must be entered in Item 17.

(h) *Code 7.* Total Labor Surplus/Small Business Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas in combination solely with small business firms in such areas, in accordance with Priority 1 in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior year procurement and research and development funds, and all Military Construction Appropriation funds. If Code 7 is entered, Code 1B or 17A must be entered in Item 17.

(i) *Code 8*. Total Labor Surplus Area Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas, but with no further preference as to whether it is to be awarded to large or small business firms, in accordance with Priority 4, in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior-year contracting and research and development funds, and all Military Construction Appropriation funds. If Code 8 is used, Code 1A must be entered in Item 17.

(j) *Modifications*. If the action is a modification, the codes will be determined on the basis of the area classification at the time of such modifying action. If a supplemental agreement is used to award the partial labor surplus set-aside portion of a contract to a concern in a labor surplus area which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-804.2(d)(2)).

21-115.1 *Item 9A. Affirmative Action Plan*. Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that an affirmative action plan has been developed and is on file. Where certification is exempted (see 12-806), enter Code "3". Also enter Code "3" for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.2 *Item 9B. Previously Held Contracts*. Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that there have been previous contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor. Enter Code 3 where certification is exempt or for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.3 *Item 9C. Woman Owned Business*. Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor is a woman owned business or entity. Enter Code 3 if the contractor does not complete this certification (see 7-2003.80) or if the award is an order under contract awarded by another Federal Agency for which data are not readily available.

21-115.4 *Item 9D. Consultant Services*. Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the award is for consulting type services.

21-116 Item 10A, FSC or Service Code. Enter a Federal Supply Classification, a Research, Development, Test or Evaluation (RDTE) Code, or a Service Code in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section I). Each DD Form 350 must contain a four-digit entry for this item. If more than one classification is applicable to the procurement action, enter the one accounting for the largest dollar volume of procurement.

(a) *Research, Development, Test, and Evaluation*. RDTE is defined in 4-101. Each DD Form 350 action for RDTE shall be assigned a code beginning with the letter "A," in accordance with Section I, Part A of the coding manual, including in general:

(i) all contracts negotiated under the authority of 10 U.S.C. 2304(a)(11), Experimental, Development, or Research Work:
(ii) most but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions;
(iii) all contracts funded by Research, Development, Test and Evaluation appropriations; and
(iv) all contracts where the purpose is for research and development even though not authorized under 10 U.S.C. 2304 (a) (5) or (11), or funded by RDT & E appropriations.

However, do not assign RDTE codes for the procurement (including rental or lease) of equipment or housekeeping supplies/services separately purchased in support of RDTE work. This exception refers to the purchase of equipment upon which RDTE work will be performed, test equipment, office equipment, structural steel plates, etc.; or services such as construction, maintenance of facilities or equipment, utilities, rental of ADP equipment, guard services, etc. Generally procurement of services or supplies that are incidental to the fulfillment of RDTE work, *but does not require contractor RDTE performance*, shall be coded in accordance with Parts B and C, Section 1 of the coding manual, even though such purchases are in support of RDTE work and RDTE funds are cited. In no case shall RDTE codes be assigned for orders under GSA Federal Supply Schedule contracts. The purchase request, as prepared by the research and development technical sections, will provide the necessary information to enable personnel preparing the DD Form 350 to properly identify the RDTE code.

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(b) *Services*. All services, except RDTE actions, shall be coded in accordance with Part B, Section I of the coding manual. Each category is assigned a series of four-digit codes for specific types of services and construction.

(c) *Supply*. Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) code from Part C, Section I of Volume I of the Department of Defense Procurement Coding Manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2-1, H2-2, and H2-3 also may be used as a reference in identifying the correct four-digit code.

21-117 Item 10B, System or Equipment Code.

(a) Enter the code for weapons system or equipment in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section II). If a weapons system or equipment code is not applicable, enter three zeros, *i.e.*, 000.

(b) Codes in Section II are not applicable to construction, subsistence, clothing/textiles, or petroleum, and generally have been assigned to all production end items whose annual programmed procurement is $2,000,000 or more. Accordingly, if a code cannot be found for a DD Form 350 action of $2,000,000 or more, which is for an end item or a component identifiable to an end item, a specific request for a code together with the applicable DD Form 350 should be addressed to the appropriate organization specified in 21-103(b). Submission of the DD Form 350 will not be delayed pending resolution of the inquiry. This reporting requirement is not applicable to the Defense Logistics Agency.

21-118 Item 10C, DD Claimant Program Number. Enter the appropriate DDCP number that identifies the commodity described in Item 11. Claimant Program Numbers are defined in Volume I of the Department of Defense Procurement Coding Manual (Section III). If the description in Item 11 is for research and development, the objective of the research and development shall control the DDCP number to be entered; *e.g.*, if the objective of the research and development is a guided missile, enter Code A-2. If the description in Item 11 is for research that cannot be identified with a particular claimant program, enter Code S-1. Contracts for ship repair, IRAN and modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of automatic data processing equipment (as defined at 4-1102.1)) and utility services shall be coded S-1. If a particular claimant program cannot be identified, enter Code S-1 for services and C9E for supplies or equipment.

21-119 Item 11, Description of Commodity or Service.

(a) Enter brief description of commodity or service. Specify end use of item and model numbers where possible, *e.g.*, M-16 Rifle; B-52 Aircraft; A-4E Aircraft, Radio Set AN/FRT-51. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Typhon, Jupiter, etc., or an identifying program number, *e.g.*, WS-107A, can be used without classifying the report.

(b) When an increase or decrease in funds is the result of price redetermination, change in fixed-fee, contract termination, engineering change, overrun, accelerated amortization, or continuation of research and development, specify the equipment or service acquired under the basic contract, such as "Price Redetermination for M-60 tanks," "Termination of Contract for J-57 Engines," "Engineering Changes on Submarine SS(N)585," "Accelerated Amortization on Contract for B-4 Maintenance Platform."

21-120 Item 12, Coordinated Procurement. Enter one of Codes 1 through 8 for each contracting action.

(a) *Code 1. Procurement Agreements*—Enter this code for contracts made under agreements among the departments or other agencies for procurement of commodities or services not assigned in accordance with Section V, Part 12. (See Section V, Part 11.)

(b) *Code 2. Other Federal Agencies.* Enter this code for all procurements from or through other Federal Agencies (except General Services Administration and Small Business Administration), such as, Government Printing Office, Federal Prison Industries, National Industries for the Blind, Veterans Administration, Tennessee Valley Authority, Treasury, Agriculture, Commerce, Justice, etc. When Code 2 is entered, Code 6 shall be entered in Item 13, Code 4 in Item 14, and Code 1 or J, as appropriate, shall be entered in Item 15. Code 2 is not applicable to Defense Logistics Agency contracting offices.

(c) *Code 3. GSA Supply Schedules.* Enter this code for all procurements under GSA Federal Supply Schedule contracts (see Section V, Part 1). Also enter this code for all contracting under GSA ADP schedule contracts. For orders under Veterans Administration contracts published in GSA Federal Supply Schedules, enter Code 2. When Code 3 is entered, Item 15 shall be coded *I* or *J*, as appropriate.

(d) *Code 4. Small Business Administration.* Enter this code if the award is to the Small Business Administration pursuant to the Small Business Act - Public Law 85-536 Section 8(a) (see 21-102(e)).

(e) *Code 5. Single Department Procurement*—Enter this code only if the reporting office has a current commodity assignment to purchase a commodity listed in 5-1201.

(f) *Code 6. Defense Logistics Agency*—Enter this code for all contracts by Defense Logistics Agency centers except contracts from or through the General Services Administration and the Small Business Administration. Military Departments also shall enter this code for orders placed against indefinite delivery-type contracts awarded by Defense Logistics Agency centers except those awarded by the Defense Fuel Supply Center.

(g) *Code 7. Outside U.S.*—Enter this code for all contracts other than those classifiable as Codes 1 through 6 above made by contracting offices located outside the United States, its possessions, and Puerto Rico.

(h) *Code 8. All Other*—Enter this code for all contracts not classifiable in codes 1 through 7 above.

21-121 Item 13, Synopsis of Proposed Procurement. Enter one of the codes described below. The term "Not Applicable" shall not be used. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply.

(a) *Code A. Was Synopsized*—Enter this code if a synopsis of the proposed contract was prepared and transmitted in accordance with 1-1003.9.

(b) *Code E. Was Not Synopsized: Original Estimate Under $10,000*—Enter this code if the proposed contract was not synopsized because it was originally estimated to be less than $10,000.

(c) *Codes 1 Through 9. Was Not Synopsized*—Enter one of these codes to identify the permissive authority of 1-1003.1(c)(i) through (ix), which correspond with Codes 1 through 9, respectively, for not synopsizing a proposed procurement. However, Code 5 shall not be used since orders under existing contracts are to be coded the same as the basic contract. Code 6 shall be used for all contracts from or through another Government department or agency, including contracting under GSA Federal Supply Schedules. Code 6 also shall be used for orders placed against DLA schedules for proprietary (brand name) items. Code 9 shall be used for contracts in which only foreign sources were solicited.

21-122 Item 14, Kind of Procurement Action. Enter one of Codes 1 through 9 for each procurement action. With respect to modifications of existing contracts, including letter contracts designated as modifications, enter one of Codes 6 through 9, as appropriate (except see (c) below).

(a) *Code 1. Initial Letter Contract*—Enter this code when a new letter contract is executed. (For a letter contract which is designated as a modification of an existing contract, see Code 6.)

(b) *Code 2. Definitive Contract Superseding Letter Contract* — Enter this code when applicable. (For a definitive modification which supersedes a letter contract designated as a modification of an existing contract, see Code 6.)

(c) *Code 3. Definitive Contract (Including Notice of Award)* — Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Also enter Code 3 for a modification which is the initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(d) *Code 4. Order Under Contract*—Enter this code when reporting orders or amendments to orders, against indefinite delivery type contracts or basic ordering agreements, GSA/DLA schedules, priced exhibits, production lists, job orders, task orders, and the like, where firm obligations are created by the issuance of such documents. Also enter this code for orders issued to other Federal agencies, such as, Federal Prison Industries, National Industries for the Blind, Treasury, Interior, Tennessee Valley Authority, Commerce, etc.

(e) *Code 5. Reserved.*

(f) *Code 6. Additional Work*—Enter this code when additional work is acquired by means of a modification to the basic contract or order (other than an order included in the list in (d) above), as follows:

(i) Bilateral modifications which increase the scope of work of existing contracts but are not authorized by the terms of existing contracts and do not meet the criteria of (iv) below.

(ii) Exercise of options for increased quantities or extended performance, or incremental yearly buys under multiyear contracts.

(iii) Modifications to letter contracts increasing the scope of work, including letter contracts designated as modifications and definitive modifications superseding letter contracts designated as modifications.

(iv) Modifications which are the initial citation and obligation of funds for a supplemental agreement to increase quantities or extend performance that was awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(v) When more than one DD Form 350 is required as outlined in 21-102(a) to report an initial letter contract or new definitive contract, Code 6 shall be used for the second or subsequent DD Form 350; Code 1 or 3 shall be used only for the first DD Form 350.

(g) *Code 7. Funding Action*—Enter this code for letter contract amendments and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multi-year contracts), increasing the estimated cost on cost reimbursement contracts, and repricing actions covering incentive price redetermination, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see 21-122(c) and (f)(iv)). Code 4 shall be used for all transactions under GSA/DLA schedules.

(h) *Code 8. Change Order*—Enter this code when reporting change orders issued pursuant to the "Changes" or "Differing Site Conditions"; or similar provisions of existing contracts.

(i) *Code 9. Termination or Cancellation*—Enter this code when reporting a termination or cancellation action.

21-123 Item 15, Contract Placement. Enter one of Codes 1 through 5, or Code J as appropriate, to show the method used in making the procurement. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, provisioning order obligating documents, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. For modifying actions made pursuant to the provisions of PL 85-804, enter code 5 in Item 15, enter code 17B (PL 85-804) in Item 17, and enter code 5 in Item 18.

(a) *Code 1. Intragovernmental*—Enter this code if the contractor in Item 6 is a Federal Government Agency other than the Department of Defense, *e.g.*, Federal Prison Industries or National Industries for the Blind; or if the procurement action is an order under a contract awarded by another Federal Agency, *e.g.*, orders under General Services Administration Federal Supply Schedules or Government Printing Office contracts. When Code 1 is entered, no entries shall be made in Items 16 through 23.

(i) Orders against contracts placed by Department of Defense purchasing offices shall not be reported as intragovernmental, but shall be reported by the ordering office in all applicable items of DD Form 350 on the basis of information to be furnished by the contracting office. The contracting office shall include in its advice to ordering agencies, specific information on the appropriate codes to be entered in Items 10A, 11, 13 and 15 through 23, as well as information customarily furnished with respect to the contractor and product or service. This subparagraph is not applicable to orders against indefinite delivery type contracts placed by the Defense Fuel Supply Center (21-102(b)(2).

(ii) Purchases from State, local and non-Federal government agencies shall not be reported as intragovernmental, but shall be classified as advertised or negotiated in Item 15, and also as nonprofit organizations in Item 16.

(b) *Code 2. Two-Step Formal Advertising*—Enter this code for new or modifying actions relating to procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids following request for an evaluation of technical proposals in accordance with Section II, Part 5. When Code 2 is entered, no entries shall be made in Items 17 through 19A. Do not use this code if solicitations are restricted to small business (see (d) below).

(c) *Code 3. Other Formal Advertising*—Enter this code for new or modifying actions relating to procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids, except two-step formal advertisement. When code 3 is entered, no entries shall be made in Items 17 through 19A.

(d) *Code 4. Small Business Restricted Advertising*—Enter this code for Small Business Restricted Advertising which is a form of negotiated procurement conducted in the same way as prescribed for formal advertising under Section II except that bids and awards are restricted to small business concerns (see 1-706.5(b)). When code 4 is entered, the firm in Item 6 must be a small business concern (Code J in Item 16); Code 1B or Code 17A shall be entered in Item 17, as appropriate; and Code 1 shall be entered in Item 18.

(e) *Code 5. Other Negotiated*—Enter this code for new or modifying actions relating to procurement resulting from negotiated procedures (see Section III). When code 5 is entered, the appropriate negotiation exception shall be entered in the code block for Item 17 and the appropriate code shall be entered in Items 18 through 23. Also enter this code for Labor Surplus Restricted Advertising (LSRA) (see DAC #76-15, Item II, 1 June 1978. When reporting LSRA, Code 1A must be entered in Item 17 and Code 1 or 2 in Item 18.

(f) *Code 6. Other Total Small Business Set-Aside*. Enter this Code if the solicitation/award is restricted totally to small business firms under set-aside procedures through conventional negotiation, *i.e.*, other than through Small Business Restricted Advertising (Code 4). (See 1-706.5(b)). When Code 6 is entered, the firm in Item 6 must be a small business concern (Code J in Item 16); Code 1B or 17A shall be entered in Item 17 and Code 1 or 2 shall be entered in Item 18, as appropriate.

(g) *Code J. Foreign Military Sales.* Enter this code if the procurement is known to be under Foreign Military Sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. When Code J is entered no entries shall be made in Items 16 through 22.

1. Code J will be entered for Foreign Military Sales purchases from or through other Federal agencies, *e.g.*, GSA Federal Supply Schedules, except that all awards to Small Business Administration will be reported in accordance with 21-102(e).

2. If only part of a procurement action is of the kind described above, that part (if in excess of $10,000) shall be reported on one DD Form 350, and the other part (if in excess of $10,000) shall be reported on a second DD Form 350.

21-124 Item 16, Type of Business Concern. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multiyear contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. However, where a modification is for procurement of additional quantities or extends the scope of work under the contract, the size of concern will be determined as of the date of the modifying action.

(a) *Awarded to Large Business Because Small Business:* Enter one of Codes A through D if the contractor is a large concern and the place of performance (Item 7) is within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see DoD Procurement Coding Manual, Volume II, page v), as follows:

(i) Enter Code A when no small business source was solicited for a bid or proposal.

(ii) Enter Code B when a small business source was solicited, but no bid or proposal was received from small business, or small business did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iii) Enter Code C when a small business source was solicited, but the low bid or proposal was not from small business, or small business was not willing to accept award of a set-aside portion of a procurement at the prices offered as determined by the price the Government would otherwise have had to pay.

(iv) Enter Code D when a small business source was solicited, but small business was not awarded the contract for reasons other than those coded A, B, or C.

(b) Enter Code J, if the award was made to a small business concern as defined in 1-701.1 and the place of performance (Item 7) was within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. Also see 21-102(e) for reporting 8(a) awards to Small Business Administration.

(c) Enter Code L, if the principal place of performance (Item 7) was outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. See DoD Procurement Coding Manual, Volume II, page v.

(d) Enter Code M, N, or P, if the award was made to a nonprofit institution and the place of performance (Item 7) was within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. A nonprofit institution is defined as any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and State, local, and other non-Federal government agencies. Enter Code *M* if the contractor in Item 6 is an Educational Institution, Code *N* if a hospital, and Code *P* for all other nonprofit institutions.

(c) Enter Code *R* if the award is made to an overseas firm, and the place of performance (Item 17) is within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

21-125 Item 17, Negotiated Under 10 USC 2304(a) Exception. This entry applies only to negotiated procurement actions.

(a) Negotiation of original contracts and of amendments for additional quantities or services shall cite as authority for such negotiation the authority of 10 U.S.C. 2304(a), which applies as specified by the appropriate "Determination and Findings" or other required Departmental procedure. Negotiations of all other amending actions which are negotiated in accordance with the provisions of the basic contract and have not been made subject to a separate "Determination and Findings" shall cite as authority for such negotiation the authority under 10 U.S.C. 2304(a) which was cited as authority for negotiating the basic contract. If a supplemental agreement is used to award the set-aside portion of a contract to a small business concern which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-706.6(d)(2)).

(b) Enter Code 1A to record negotiated actions pertaining to labor surplus area or industry set-asides. Labor Surplus Set-Aside designates a method of procurement whereby a portion of the requirement is withheld from general solicitation (either formally advertised or negotiated), and is reserved for negotiation exclusively with labor surplus area concerns as defined in 1-801.1.

(c) Enter Code 1B to record negotiated actions pertaining to small business set-asides made unilaterally by a Department of Defense contracting officer. Small Business Set-Aside designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for small business concerns. These procurements are considered "negotiated" regardless of whether the contract is awarded by Small Business Restricted Advertising.

(d) Enter Code 1C to record negotiated actions pertaining to major disaster area set-asides. Major Disaster Area Set-Aside designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for firms located in major disaster areas and is to be performed substantially within such major disaster areas.

(e) Enter one of the codes from 2 through 16, as appropriate, when negotiation was accomplished pursuant to 10 U.S.C. 2304(a) (2), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), or (16).

(f) Enter one of the codes from 10-1 through 10-26, as appropriate, when negotiation was accomplished pursuant to 10 U.S.C. 2304(a) (10). The procurement circumstances applicable to the negotiation as described in 3-210.2 are set forth as 10-1 through 10-18 representing (i) through (xviii). However, Negotiation Exception 10-18 pertains to purchases under Foreign Military Sales arrangement which for reporting purposes does not require an entry in Item 17; therefore, codes 10-18 will not be used. Codes 10-19 through 10-25 may be used for those procurement circumstances which are authorized in Departmental instructions and for additional procurement circumstances later approved and published in the DAR. Enter Code 10-26 if none of the procurement circumstances set forth in 3-210.2 or Departmental instructions is applicable.

(g) Enter Code 17A when reporting Joint Small Business Set-Asides pursuant to 15 U.S.C. 644 (P.L. 85-536), *i.e.*, set-asides agreed to jointly by the Small Business Administration representative and the Department of Defense contracting officer. (See definition of set-aside for Code 1B above.) Enter Code 17B when any other public law authorized the negotiation, and in the space provided specify the number of the public law or U.S. Code citation. For repurchase actions following default, where no other negotiation authority is utilized, enter Code 17B and specify the words "Repurchase Action".

21-126 Item 18, Extent of Competition in Negotiation.

(a) The purpose of this item is to provide statistics reflecting the extent and kind of competition obtained under contracts executed pursuant to the negotiation authorities of the DAR. Detailed information with respect to the presence or absence of competition in negotiated procurement is of vital importance to the Department of Defense. Information obtained from these reports is used throughout the Department for internal management purposes. Additionally, this information is provided to various Committees of the Congress on a continuing basis. It is critically important that this item receive careful attention by reporting activities to ensure its completeness and accuracy.

(b) Provision is made to record the extent of competition as follows:

(i) price competition;
(ii) design, technical, or other competition;
(iii) follow-on actions after price competition;
(iv) follow-on actions after technical or other competition;
(v) other noncompetitive actions;
(vi) catalog or market price actions; and
(vii) not considered for competition.

(c) The following contract actions are exempt from reporting the extent of competition and shall be entered as Code 7:

(i) awards for brand name items for commissary resale;
(ii) awards to nonprofit institutions;
(iii) awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation; and
(iv) awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(d) (1) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices. However, a contract may also be reported as "price competition" even though only one offer is received when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(2) Procurements shall not be reported as "price competition" where only one responsive offer was received and the solicitation was restricted to a prime contractor and his vendor for that item.

(3) Multiple awards in such areas as subsistence, clothing and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

(4) Transactions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the responses to solicitations, the procurement history of the items procured, and other relevant information, and shall exercise sound judgment in the reporting of transactions as "price competition."

(e) Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts, and many initial contracts for new military weapons fall into the category of design or technical competition. If some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (d) above, the contract should be reported as a "design, technical, or other competition" award.

(f) A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. Incremental yearly buys under multi-year contracts and exercise of options shall not be included in this category, except as provided in (h) below. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (*i.e.*, price or design or technical) will be reported as Code 3 or 4 as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis will be reported as Code 5. Nothing in the foregoing should be construed as providing authorization for noncompetitive procurement. DAR provisions requiring either formal advertising or competitive negotiation shall be complied with.

(g) Codes 1 through 7 shall be entered as follows:

(1) Enter Code 1 when the award of the contract is based on price competition as defined in (d) above. Awards for set-aside quantities under set-aside procedures shall be included in this category. Also include actions when adequate price competition exists based on catalog or market price (see 3-807). In no case shall cost-reimbursement type contracts be coded 1.

(2) Enter Code 2 when the award of the contract is based on design, technical, or other competition as defined in (e) above. For example, this code shall be entered where evaluation was made of technical or design proposals submitted by several different firms and a determination was made to conduct further negotiations with only one of the firms. Also enter Code 2 where some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (d) above.

(3) Enter Code 3 for procurement actions covering follow-on procurement when the original contract was awarded on the basis of price competition as described in (f) above.

(4) Enter Code 4 for procurement actions covering follow-on procurement when the original contract was awarded on the basis of design, technical, or other competition as described in (f) above.

(5) Enter Code 5 to report procurement actions where there was no competition and Codes 3, 4 and 6 do not apply.
in the award and where the work involved was not a follow-on procurement reportable as Code 3 or 4 above.

(6) Enter Code 6 to report noncompetitive actions based on established catalog or market prices but which are not reportable as Code 3 or 4 above.

(7) Enter Code 7 to report contract actions exempt from reporting the extent of competition as listed in (c) above.

(h) Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. However, a modification pursuant to the terms of an existing contract shall not be reported as price competition (Code *1*) unless the basic contract conforms to the definition in (d) above. If a basic contract was reported as price competitive under an earlier definition but does not conform to the definition in (d) above, the modification shall be reported as Code 3, Follow-on Action After Price Competition.

21-127 Item 19, Certified Cost or Pricing Data. Enter Code A or B to identify the applicability of Public Law 87-653 to the current DD Form 350 action being reported.

(a) Enter Code *A* if pursuant to 3-807.3 the contractor was required to submit certified cost or pricing data in connection with the specific procurement action covered by the instant DD Form 350.

(b) Enter Code *B* if the contractor was not required to submit certified cost or pricing data.

21-128 Item 19A, Cost Accounting Standards Clause. Enter the following codes to identify whether or not the contract (original contract and/or modifications) being reported on DD Form 350 includes or is subject to the Cost Accounting Standards clause as required by 3-1204.

(a) Enter Code *1* if the contract includes the clause or in the case of a modification, is subject to the clause.

(b) Enter Code *2* if the contract does not include the clause or in the case of a modification, is not subject to the clause.

21-129 Item 20, Type of Contract. Enter only one of the codes in accordance with the provisions of the basic contract. (See Section III, Part 4.) Where the contract involves more than one type, the predominant type based on dollars shall be entered. However, if any non-predominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the contract. The total of the DD Forms 350 so reported shall equal the total contract action.

(a) For fixed-price contracts with redetermination clause Type A (see 7-109.2), enter Code *A*; for Type E (see 7-109.3), enter Code B.

(b) Code L shall be entered for a fixed-price incentive contract which contains performance incentive provisions as outlined in 3-407; and Code M shall be entered for an FPI contract without such performance incentive provisions. Similarly, Code V shall be entered for a cost-plus-incentive-fee contract which contains performance incentive provisions; and Code W for one which does not contain such provisions. Care shall be exercised to assure that FPI and CPIF contracts which contain only cost incentives are not coded L or V, but are coded M and W, respectively.

(c) Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. Modifying actions for additional supplies and services shall be reported according to the pricing provision applicable to the modifying action. If a contract is converted from one pricing provision to another, *e.g.*, from CPFF to CPIF, the DD Forms 350 used to report this adjustment shall reflect only the amount that will be paid under the new pricing provision. When reporting original letter contracts and amendments thereto, enter the type of contract that will most likely be used when the letter contract is converted to a definitive contract.

21-130 Item 21, Subcontracting Program Plan Clause. Enter the appropriate code to indicate which subcontracting program plan clause or clauses (see 7-104.14(b), (c), and (d)) are associated with this procurement action or contract. Enter Code 1 if no subcontracting program plan clause was incorporated; enter Code 2 if only the negotiated clause (see 7-104.14(b)) was incorporated; enter Code 3 if both the negotiated clause (see 7-104.1(b)) and incentive clause (see 7-104.14(d) or any other incentive type clause with the same intent) have been incorporated; and enter Code 4 if the formally advertised clause (see 7-104.14(c)) was incorporated.

21-131 Item 22, Trade Data. The Trade Data elements shown below apply to all supply, service, and construction acquisitions, except those exempt from the Buy American Act.

(a) Subitem A. Enter the number of firms that offered foreign end products. If no firms offered foreign products, enter zero. If the number of firms offering foreign products is 9 or greater, enter 9.

(b) Enter as a two-digit code the percent of the contract award price that represents the foreign content of the item or service acquired. Enter zero as 00, 1 through 9 percent as 01 - 09, and 100 percent as 99. This information is required only from the successful offeror.

(c) Subitem C. If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and the low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter zero.

21-132 Item 23. Enter Code 1 if the contract contains one of the clauses prescribed by 7-104.31(a), 7-104.32, or by 7-2003.49, related to the entitlement to the issuance of duty-free entry certificates. Enter Code 2 if only 7-104.31(b) is included or if no clause dealing with this matter is included.

21-133 Item 24, Date of This Action. Enter the year, month and day when a mutually binding agreement was reached. Enter each segment as a two-digit number using 01 through 12 for January through December. For example, enter 2 January 1980 as 80/01/02. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. In the case of letter contracts, the date to be entered in this block is the date when the signed copy is received from the contractor. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the fund availability or the date when the contract becomes effective (see 21-122(c) and (f)). For contracts awarded under the provisions of 1-318(a), the date shall be when the contract becomes effective. The action date shall determine the fiscal year in which the DD Form 350 is reportable. Actions with dates in one fiscal year shall not be assigned report numbers in a subsequent fiscal year. Thus, for example, the first action reported by a purchasing office in fiscal year 1980 must carry an action date of 1979 October 1 or later.

21-134 **Item 25, Estimated Completion Date.** Enter the year and month it is estimated the work called for by the contract will be completed. Enter each segment as a two-digit number, using 01 through 12 for January through December. For example, enter 80 April as 80/04. Words such as "continuous," "indeterminate," "unknown," or "100 days after approval of first article," are not acceptable. For basic contracts, the last delivery date shall govern the entry in this item. For supplemental agreements, the entry shall be governed by the delivery date in the specific supplemental agreement rather than the delivery date of the basic contract. For engineering changes, enter the date of delivery of the last end item involved. For spare parts provisioning actions, enter the date of the last spare parts delivery. Where the estimated completion date is not affected by the action being reported, enter the date of delivery of the last end item involved.

21-135 **Item 26, Total of This Action.** Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. If the action decreases the amount of Government obligation, also enter the symbol "CR" for credit. Do not enter the word "decrease," parentheses, or dashes. Enter whole dollars only; drop cents without rounding. For example, $25,000.10 or $25,000.90 shall be entered as $25,000.

21-136 **Item 27 Reserved.**

21-137 **Item 28, Typed Name and Signature of Contracting Officer or Representative.** Self-explanatory.

21-138 **Item 29, Telephone Extension.** Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

21-139 **Item 30, Date Submitted.**

21-140 **Remarks.** Use the reverse side of DD Form 350 or attach a separate 8½-inch x 11-inch sheet of paper to explain entries on the form.

Part 2—Monthly Procurement Summary (DD Form 1057)

21-200 Scope and Purpose of Part. This Part prescribes the reporting on DD Form 1057 (set forth in F-200.1057) of procurement actions of $10,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 21-101.
This reporting requirement has been assigned Report Control Symbol: DD I&L(M) 1015.

21-201 Applicability and Coverage.

(a) Reports on DD Forms 1057 shall be prepared (*typewritten*) by each purchasing office of the Department of Defense to which a reporting office code has been assigned. Separate codes may be assigned to an installation, base or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of procurement, such as base and central procurement, or RDTE and non-RDTE procurement. Subject to the approval of the organizations listed in 21-202, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit procurement actions of $10,000 or less involving:

(i) appropriated funds;
(ii) contract authorizations;
(iii) stock or other revolving funds which are replenished or reimbursed from appropriated funds;
(iv) appropriated funds transferred to the Departments, such as Military Assistance Program funds; and
(v) appropriated funds obligated pursuant to provisions of Public Law 85-804 (see 21-123).

Procurement actions include definitive contracts, purchase orders, notices of award, delivery orders or calls (except those against indefinite delivery type contracts entered into by the Defense Fuel Supply Center), work orders, work requests, service orders, task orders, orders against blanket purchase agreements, imprest (petty cash) fund transactions, any other orders against existing contracts, and debit and credit actions that modify a contract, such as modifications, change orders, supplemental agreements, cancellations, and terminations.

(c) The report shall exclude actions of $10,000 or less which:

(i) involve nonappropriated funds;
(ii) are delivery orders against indefinite delivery type contracts entered into by the Defense Fuel Supply Center; Defense Fuel Supply Center shall report the estimated total cost of indefinite delivery type contracts;
(iii) are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;
(iv) are placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions;
(v) are orders on GSA stores depots;
(vi) involve Government bills of lading or transportation requests; and

(vii) are for purchase of land, or rental or lease of real property.

21-202 Due Date and Distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) *Army* contracting offices shall distribute DD Form 1057 as follows.

(1) The original (except from Engineer Civil Functions contracting offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Engineer Civil Functions contracting offices shall forward the original to HQDA (DAEN-PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy field contracting offices shall forward the original DD Form 1057 to the Head of the Contracting Activity from which contracting authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC). ASO and SPCC shall forward their reports to the Naval Supply System Command Headquarters. Heads of Contracting Activities shall review and correct the feeder reports, prepare a consolidated DD Form 1057 and submit the consolidated report to Headquarters, Naval Material Command, Washington, D. C. 20360, Attn: MAT 08C14.

(d) *Air Force* contracting offices shall forward the original DD Form 1057 to AFLC/ACOCS, Wright-Patterson AFB, Ohio 45433. Separate reports shall be submitted by each activity which has been determined to be a separate reporting office. Air Force contracting offices, except those under AFLC and AFSC shall forward one copy to the appropriate major command headquarters staff contracting office or division.

(e) *Defense Logistics Agency* contracting offices shall forward the original DD Form 1057 to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Alexandria, VA, 22314, ATTN: DLA-PA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ-SV-W-P), Washington, D. C. 20310.

(g) Procurement actions of $10,000 or less which are reportable in accordance with 21-201 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

21-203 Terms Used. The terms used in DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. (See Section XXI, Part 1.)

21-204 Heading.

(a) *Reserved.*

(b) *Month Ending*—Enter the year, month and day indicating the ending date of the month reported.

(c) *Contracting Office and Mailing Address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(d) *Reporting Office Code*—Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item 5 of DD Form 350.

21-204.1 *Number of Actions.*

(a) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (b) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(b) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $10,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(i) meals and lodging;
(ii) automatic deliveries, such as, bread, milk, and ice cream;
(iii) utilities, such as, electricity, gas, and telephone.

(Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

21-204.2 *Dollar Value*. All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.-. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes.

21-205 Section A, All Procurement Actions of $10,000 or less.

(a) Enter on Lines 1 through 4 the number and value of actions of $10,000 or less according to type of contractor (*i.e.*, small business, large business, educational and nonprofit institutions), and for work outside the U.S., according to whether the actions were advertised or negotiated.

(b) Report on Line 5*a* orders under GSA Federal Supply Schedules. Orders under Veterans Administration contracts published in GSA Federal Supply Schedules shall be reported on Line 5*b*.

(c) Report on Line 5*b* purchases from or through other Federal agencies.

(d) Report on Line 6 transactions involving Foreign Military Sales (see 21-123(g)).

(e) Enter on Line 7 the totals of Lines 1 through 6.

(f) Purchases from overseas exchange and educational services (*e.g.*, European-Korean Exchange Systems) shall be reported on line 4b of Section A and line 6 of Section B.

21-206 Section B, Negotiated Actions.

(a) Enter the number and dollar amount of negotiated actions of $10,000 or less according to the authority of 10 U.S.C. 2304(a) which was used. The totals of Lines 1 through 17 in Section B shall equal the sums of the entries on Lines 1*b*, 2*b*, 3*b*, and 4*b* in Section A.

(b) Enter on line 3A the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are small business-small purchase set-asides in accordance with 1-702(c) and 3-603.1(g).

(c) Enter on line 3B the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are not small business-small purchase set-asides in accordance with 1-702(c) and 3-603.1(g).

(d) The following provision is applicable only to U.S. Army Troop Support Agency Activities. In lieu of separately tabulating nonfood/food transactions for commissary resale items that are reportable under negotiation authority 10 U.S.C. 2304(a)(8) and (9), a ratio of the total shall be reported as follows:

(1) Enter 26% of the total actions on Line 8 and 74% on Line 9.

(2) Enter 37% of the total dollar value on Line 8 and 63% on Line 9.

21-207 Section C, Research Development, Test and Evaluation Actions. (These actions are also reported in Sections A and B). Enter the number and dollar amount of actions of $10,000 or less for research, development, test and evaluation work on Lines 1 through 4. Do not include purchases of supplies or services that are incidental to the fulfillment of RDTE work but do not require contractor RDTE performance (see 21-116(a)).

21-208 Section D, Competition in Negotiated Actions.

(a) In order to better represent competitive award data within DoD, certain contract actions of the types specified in 21-126(c) are exempt from reporting under this Section D and are to be separately identified in line 3 of this section.

(b) Enter on line 1 the number and dollar amount of those negotiated actions considered for competition that were determined to be price competitive in accordance with the criteria set forth in 21-126(d) and 21-126(g)(1).

(c) Enter on line 2 the number and dollar amount of those negotiated actions considered for competition that were determined not to be price competitive.

(d) Enter on line 3 the number and dollar amount of those negotiated actions meeting the requirements of 21-126(c) which are exempt from reporting under this Section D.

(e) Enter on line 4 the sums of entries on lines 1, 2, and 3 of Section D. The line 4 totals shall equal the totals on line 18 of Section B.

21-209 Section E, Small Disadvantaged Business Actions (see 1-707.3).

(a) Enter on line 1 the number and dollar amount of awards made to small disadvantaged business concerns that were made through the Small Business Administration pursuant to the Small Business Act - Public Law 85-536, Section 8(a). Entries on this line shall also be reflected on line 17B of Section B.

(b) Enter on line 2 the number and dollar amount of awards made directly to small disadvantaged business concerns.

(c) Enter on line 3 the sums of the entries on lines 1 and 2 of Section E.

21-210 Section F, Women-Owned Business Actions (see 7-2003.80).

(a) Enter on line 1 the number and dollar amount of those awards shown in Section A, Line 2, that were made to women-owned business concerns.

(b) Enter on line 2 the number and dollar amount of those awards shown in Section A, line 1, that were made to women-owned buisness concerns.

(c) Enter on line 3 the sums of entries on lines 1 and 2 of Section F.

21-211 Adjustments. Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report for the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "*CR*" following the amount to signify a credit entry.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

Part 3—Report of Individual Contract Profit (DD Form 1499)

21-300 Scope and Purpose of Part. This part prescribes the reporting on DD Form 1499 (F-200.1499) of cost and profit plans on contract actions of $500,000 or more, negotiated by specified contracting offices. The form provides a basis for analyzing profit patterns and weighted guidelines objectives on defense contracts. As used in this part, the term *cost* includes target cost as well as estimated cost, and the term *profit* includes fee.

21-301 Applicability. DD Form 1499 shall be prepared by each contracting office of the—

(i) Army Materiel Development and Readiness Command, Ballistic Missile Defense Systems Command, Defense Supply Service, Washington, and U.S. Army Corps of Engineers;

(ii) Air Force Logistics and Systems Commands; and

(iii) Naval Air, Sea, and Electronic Systems Commands, Naval Facilities Engineering Command, Naval Regional Contracting Office, Philadelphia. The form also shall be prepared by the following Navy activities of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; and Naval Regional Contracting Office, Long Beach. Contracting offices located outside the United States, its possessions, and Puerto Rico, under the jurisdiction of the above-mentioned commands, are exempt from this reporting requirement.

21-302 Coverage.

(a) A DD Form 1499 shall be prepared by the contracting offices described in 21-301 for each negotiation of a contractual agreement involving a separate cost and profit that together total $500,000 or more. This negotiated total may agree, but not necessarily, with the amount obligated by the contractual instrument. The instrument may be a new definitive contract, an indefinite delivery-type contract, the definitization of a letter contract, or order under a basic ordering agreement, a supplemental agreement, or any other action in which the contracting officer and contractor negotiate an estimated cost and profit. If, in connection with a fixed-price-type contract or contract modification, the contracting officer requires the contractor to submit cost or pricing data pursuant to 3-807.3, a DD Form 1499 shall be prepared showing the contracting officer's best estimate of cost and profit.

(b) If more than one profit rate applies to a negotiation and the amount for each rate is $500,000 or more, a separate DD Form 1499 shall be used to report data for each rate. If the dollar amount for any profit rate of a multirate negotiation is less than $500,000, the data for the amount below $500,000 shall not be reported. If the separation of a contract into different rates produces no portion of $500,000 or more, a report on DD Form 1499 shall not be submitted.

(c) If any reportable negotiation includes a cost or cost-sharing portion or a firm fixed-price portion not reportable pursuant to (a) above, that portion shall not be reported on DD Form 1499. If the application of this provision fragments an action so that an otherwise reportable portion is less than $500,000, that portion shall not be reported on DD Form 1499.

(d) A DD Form 1499 shall be submitted if the above conditions are met, even though (i) price competition was used, (ii) weighted guidelines were not used, or (iii) a supplemental agreement involving cost and profit was executed without changing the profit rate applicable to the basic contract.

21-303 Due Date and Distribution.

(a) Contracting offices shall (i) prepare DD Form 1499 as soon as possible after the date of action, (ii) assemble the reports for the month of action, and (iii) forward the reports in duplicate within 10 days after the close of the month as follows:

(1) Army: HQDA (JDHQ-SV-W-P), Washington, D.C. 20310:

(i) Contracting offices under the jurisdiction of DARCOM and the BMDS Command shall report through U.S. Army Materiel Development and Readiness Command, Attn: DRCPP-SC, 5001 Eisenhower Avenue, Alexandria, Va. 22333;

(ii) Contracting offices under the jurisdiction of the U.S. Army Corps of Engineers shall report through the Office, Chief of Engineers, HQDA (DAEN-PRP), Washington, D.C. 20314.

(2) Navy: Headquarters, Naval Material Command, Attn: MAT-08C1D, Washington, D.C. 20360.

(3) Air Force: AFLC/ACOCD, Wright-Patterson Air Force Base, Ohio 45433.

(b) Prior to submission of DD Form 1499, contracting offices shall review the form and associated contract files sufficiently to insure that all reportable transactions are reported and that reports are complete and accurate.

(c) DD Form 1499 shall be submitted as an unclassified document. If the reporting office considers it necessary to apply a security classification to a DD Form 1499, a communication relating the reasons for the classification shall be submitted to the Office of the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations and Control, through the appropriate organization in 21-303(a). In no case shall security classification be considered a reason for not reporting on DD Form 1499.

(d) The reporting requirements of this part are assigned RCS:DD-R&E(M)1215.

21-304 Specific Entries on DD Form 1499.

(a) *Department.* Enter Army, Navy, or Air Force, as appropriate.

(b) *Item 1, Report No.* Each contracting office identified by a separate number in the item 5 code block shall enter a four-digit number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by the last two digits of the fiscal year. Numbers with less than four significant digits shall be preceded by zeros; e.g., the fourth report in fiscal year 1977 would be numbered 0004–77. This number identifies a specific DD Form 1499 and is not related to any DD Form 350 number.

(c) *Item 2, Contract No.* Enter the contract number in items 2.a., b., c., and d., in the manner prescribed for DD Form 350 in 21-108.

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(d) *Item 3, SPIIN.* Enter in item 3 any order, supplemental agreement, or other modification number in the manner prescribed for DD Form 350 in 21-110.

(e) *Item 4, Date of Action.* Enter in numeric terms the year and month (e.g., 77-03 for 1977 March) when a mutually binding agreement was reached on the estimated cost and profit. For example, this may be the date when—

(i) a new definitive contract was awarded,
(ii) a letter contract was definitized,
(iii) a supplemental agreement was executed,
(iv) a change order was definitized, etc.

(f) *Item 5, Contracting Office Name.* Enter the name of the contracting office submitting the report, and enter in the item 5 code space, the symbol or number assigned to that contracting office in the DoD Procurement Coding Manual, Volume III.

(g) *Item 6, Type of Pricing Action.* Enter in the item 6 code space Code A for the first reportable action pertaining to a contract, i.e., the award of a new definitive contract, a definitive contract superseding a letter contract, or an indefinite delivery-type contract. Enter Code B for all other types of actions, including orders under basic ordering agreements.

(h) *Item 7, Contractor Identification.* Enter the complete name of the concern and, if applicable, the name of the division to which the award was made. Enter in the item 7 code space the first six digits of the contractor code as shown in the DoD Procurement Coding Manual, Volume II. If the contractor is not listed in the manual, no code shall be entered by the contracting office.

(i) *Item 8, Principal Place of Performance.* Enter the actual location of the plant or place of business where the items will be produced or the service rendered in accordance with instructions in 21-113 for DD Form 350. Enter in the item 8 code space the city and State codes shown for the contractor at the specified location in the DoD Procurement Coding Manual, Volume II. If the contractor's name is not listed in the manual, or is listed for a location or locations other than the one reported, no code shall be entered by the contracting office.

(j) *Item 9, Federal Supply Class or Service Code.* Enter the appropriate Federal Supply Class or Service Code from the DoD Procurement Coding Manual, Volume I, in accordance with instructions prescribed for item 10A of DD Form 350 in 21-116.

(k) *Item 10, DD Claimant Program No.* Enter in the item 10 code space the code from the DoD Procurement Coding Manual, Volume I, Section III, that describes the commodity or service called for by the contract.

(l) *Item 11, Weighted Guidelines Category.* Enter in the item 11 code space only one of the Codes A, B, C, or D, to identify the weighted guidelines applicable to the reported action.

(m) *Item 12, Type of Contract.* Enter in the item 12 code space only one of the codes A, J, K, L, R, U, or V to show the pricing provisions applicable to the reported action. If more than one type of pricing applies to a single negotiation, the provisions of 21-302(c) and (d) apply. That is, separate DD Forms 1499 shall be prepared for each type of pricing involving a cost and profit totaling

$500,000 or more; DD Forms 1499 shall not be prepared for (i) types of pricing with less than aggregate cost and profit of $500,000, (ii) cost-no-fee, or (iii) firm fixed-price without a negotiated cost and profit.

(n) *Item 13, Negotiation Summary.*

(1) Enter dollar amounts applicable to lines a. through f. as proposed by the contractor, the Government's objective, and the negotiated amounts. These entries shall be to the nearest whole dollar; do not show cents, or make entries involving cent positions. For example, $568,035.54 shall be entered as $568,036 and not as $568,036.00; $500,500.49 shall be entered as $500,500.

(2) The dollar entries shall reflect the entire reportable amounts negotiated in the contractual agreement, not merely the portion obligated. Thus, awards contemplating incremental funding shall be reported as total negotiated cost and profit at the time of initial award, not as the amounts initially obligated. However, amounts applicable to options for additional quantities shall be excluded unless the options are exercised. When options are exercised, a report shall be submitted if the amounts meet the dollar threshold of 21-302.

(3) For cost-plus-award-fee (CPAF) contracts, only the base fee shall be reported.

(4) For indefinite delivery-type contracts, the amounts reported shall reflect the best estimate of the annual requirement on the first reportable delivery order.

(5) Enter on line g. the cost of money percentage rate proposed by the contractor, obtained from block 1 of the CASB-CMF form. The objective and negotiated rate will be the cost of money percentage rate used on the DD Form 1861.

(o) *Item 14, Weighted Guidelines Profit Factors (see DD Form 1547).* If weighted guidelines are used, show the measurement base and profit/fee dollars in whole numbers in accordance with (n) above. If the weighted guidelines are not used to develop the prenegotiation profit objective, enter the measurement bases on line a. and complete only lines e., f., and g. The manufacturing guidelines adjustment, line a.(11), shall be completed only for contracts coded A in item 11 and must equal 30 percent of the amount entered on line a.(10). The cost of money adjustment, line e., shall be completed for all contracts coded as B, C, or D in item 11 and must equal the objective amount in item 13.b.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

Part 4—Report of Contract Completion (DD Form 1500)

21-400 Scope and Purpose of Part. This Part prescribes the reporting on DD Form 1500 (set forth in F-200.1500) of actual cost and profits earned on prime contracts of $200,000 or more (and in some instances $500,000 or more—see 21-401) awarded by the purchasing offices of those commands specified in 21-401 below. The term "profit" also includes fee. Since the form also includes data on initial and adjusted cost and profit, it is independent of, and will not be compared with, DD Form 1499.

21-401 Applicability and Coverage.

(a) DD Form 1500 shall be prepared for each physically completed FPR, FPI, CPAF, CPIF, and CPFF contract (which was not previously reported on a DD Form 1500 or predecessor form) and which was:

(1) $200,000 or more if completed after 30 June 1966, and was

(2) awarded by (but regardless of whom administered by) purchasing offices of the following commands:

- (i) Army Materiel Development and Readiness Command; Ballistic Missile Defense Systems Command;
- (ii) Naval Air, Electronic, and Sea Systems Commands;
- (iii) Naval Supply Systems Command (Navy Aviation Supply Office, Navy Ships Parts Control Center, and Naval Regional Procurement Office at Long Beach only;
- (iv) Air Force Systems and Logistics Commands.

(b) Contract administration offices, including plant representatives or Defense Contract Administration Service offices, if applicable, shall:

(1) Notify purchasing offices in (a) above, when any contract covered by these instructions is physically completed. A copy of DD Form 1593, annotated as an information copy, may be used for this purpose.

(2) For completed CPFF contracts administered on behalf of the purchasing offices in (a) above, submit DD Form 1500 reports promptly to the appropriate purchasing office. For other types of contracts, the contract administration office shall furnish promptly to the appropriate purchasing office, information required by the purchasing office to prepare DD Form 1500.

(c) Purchasing offices in (a) above shall prepare DD Form 1500 reports for completed CPAF, CPIF, FPI and FPR contracts, and shall be responsible for assuring prompt submission of all DD Form 1500 reports, including those for CPFF contracts, to the addressees listed in 21-402. Each purchasing office shall maintain a register of all physically completed contracts of the aforementioned types beginning with a listing of those completed contracts for which a DD Form 1500 has not yet been submitted. This register shall include, as a minimum, the contract number, contractor's name, date of physical completion, estimated dollar amount of contract, and date DD Form 1500 is submitted. If the DD Form 1500 is delayed beyond the due date prescribed in 21-402, the reason for such delay shall be noted in the register.

(d) Purchasing offices which are located outside the United States, its possessions and Puerto Rico and are under the jurisdiction of the above Commands are exempt from this reporting requirement.

(e) The amount of $200,000 used as a threshold for reporting shall be based on the sum of the final cost and profit (or fee), exclusive of amounts for firm fixed price or cost no-fee portions of a contract. If exclusion of the FFP or cost no-fee portions reduces an otherwise reportable contract below the aggregate of $200,000, the contract shall not be reported on DD Form 1500.

(f) DD Form 1500 shall be submitted for each contract meeting the above conditions, even though the contract was not previously reported on DD Form 1499 or a similar predecessor form.

(g) DD Form 1500 shall be submitted for terminated contracts (other than FFP, cost, and cost sharing contracts) on which there is a final cost and profit or fee aggregating $200,000 or more for contracts terminated after 30 June 1966.

(h) If final costs and profit are negotiated for two or more contracts as a package (*e.g.*, FPR aircraft engine contracts), a single DD Form 1500 may be submitted for all the contracts included in the package. One contract number shall be selected as the master for identification in Item 2 of the form, and the other contract numbers shall be listed in the "Remarks" section, Item 14.

21-402 Due Date and Distribution.

(a) The DD Form 1500 report shall be prepared within six months after a contract is physically completed or when it is financially closed out (see S2-301.2), whichever occurs first. Timeliness of reporting is of greater importance than meticulous accuracy of amount. In the absence of significant dispute or known differences of opinion between the contractor and the Government that may have substantial impact on cost of final earned profit, the final cost and profit may be approximated. For this purpose amounts withheld by contract withholding provisions pending full contractor compliance after completion of work shall be treated as being payable to the contractor.

(b) Contract administration offices shall submit the original and three copies of the report for CPFF contracts to the appropriate purchasing office within five work days after the preparation date in (a) above.

(c) Within 10 days after the close of each month, purchasing offices shall forward all reports prepared as in (a) above or received as in (b) above to the appropriate one of the following commands:

(1) Army—Headquarters, U.S. Army Materiel Development and Readiness Command, Attn: DRCRP-SC, Washington, D.C. 20315.

(2) Navy—Headquarters, Naval Material Command, Attn: MAT 08C14, Washington, D.C. 20360.

(3) Air Force — AFLC/ACOPL, Wright-Patterson Air Force Base, Ohio 45433.

(d) If it is not possible to submit the DD Form 1500 report at the required time because of significant disputes or other factors which would affect the estimated final profit rate by more than 0.5% of the estimated final cost, a letter report shall be submitted indicating the reason for delay and the estimated date when a DD Form 1500 will be submitted.

(e) DD Form 1500 shall be submitted as an unclassified document. Should a reporting office consider it necessary to apply a security classification to a DD

Form 1500, a communication relating the reasons for such classification shall be submitted to the Office of the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations and Control, through the appropriate organization in (c) above. In no case shall security classification be considered a reason for not reporting on DD Form 1500.

21-403 General Instructions for DD Form 1500.

(a) All dollar amounts shall be entered to the nearest whole dollar; entries shall not be made involving the cents positions. For example, $500,000.50 shall be entered as $500,001; and $500,000.49 shall be entered as $500,000, not $500,000.00.

(b) All percentages shall be entered to the nearest one-tenth of a point. For example, 11.45% shall be entered as 11.5%, and 11.44% shall be entered as 11.4%. Percentages shall be computed by (i) dividing the profit by the cost and obtaining the quotient to four decimal places; (ii) multiplying the result by 100; and (iii) rounding the product to the nearest tenth of a point. Example: $55,000 Profit divided by $385,000 Cost equals .1428 X 100 equals 14.28 or 14.3%

21-404 Specific Entries on DD Form 1500.

(a) *Department*. Enter Army, Navy or Air Force, as appropriate.

(b) *Report Control Symbol*. Enter in accordance with Departmental implementing instructions. The symbol may be overprinted on the form.

(c) *Item 1, Report No.* Each purchasing office which is identified by a separate number in the Item 5 code block shall enter a four-digit number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by the last two digits of the fiscal year. Numbers with less than four significant digits shall be preceded by zeros; *e.g.*, the sixth report in fiscal year 1969 would be numbered 0006-69. This number identifies a specific DD Form 1500 and is not related to any DD Form 350 or 1499 report number.

(d) *Item 2, Contract No.* Enter the contract number in the same manner as prescribed for DD Form 350 in 21-108.

(e) *Item 3, Award Date*. Enter in numeric terms (*e.g.*, 67 / 04 for 1967 April) the year and month when the contract was initially awarded.

(f) *Item 4, Completion Date*. Enter in numeric terms (*e.g.*, 69 / 05 for 1969 May) the year and month when the contract was physically completed.

(g) *Item 5, Purchasing Office Name*. Enter the name of the purchasing office submitting the report and enter in the Item 5 code space, the symbol or number assigned to that purchasing office in DoD Procurement Coding Manual, Volume III. Contract administration offices shall enter the name and code of the appropriate purchasing office to which the report is being submitted. Identification of the contract administration office shall be shown in Item 16.

(h) *Item 6, Contractor Identification*. Enter the complete name of the concern and, if applicable, the name of the division to which the award was made. Enter in the Item 6 code space the first six digits of the contractor code as shown in the DoD Procurement Coding Manual, Volume II. If the contractor is not listed in the manual, no code shall be entered by the reporting office.

(i) *Item 7, Principal Place of Performance*. Enter the actual location of the plant or place of business where the items were produced or service was rendered in accordance with instructions prescribed in 21-113 for DD Form 350. Also enter in the Item 7 code spaces the city and state codes shown for the contractor at the specified location in DoD Procurement Coding Manual, Volume II. If the contractor's name is not listed in the manual or is listed for a location or locations other than the one reported, no code shall be entered by the reporting office.

(j) *Item 8, FSC or SV Code*. Enter the appropriate Federal Supply Class or Service Code from the DoD Procurement Coding Manual, Volume I, Section I.

(k) *Item 9, DD Claimant Program No*. Enter from the DoD Procurement Coding Manual, Volume I, Section III, the code which describes the commodity or service called for by the contract.

(l) *Item 10, Type of Contract*. Enter in the Item 10 code space only one of the codes, A, L, R, U, or V, to show the pricing provisions applicable to the contract. If more than one pricing provision was included in the contract terms, enter the code applying to the predominant provision. Code A applies to all types of FPR contracts and Code L applies to all types of fixed price incentive contracts.

(m) *Item 11, Contract Cost*. This item shows the contract costs from initiation through completion. Do not include as part of the costs any amounts awarded in the contract on a firm fixed price or cost no-fee basis.

(1) *Item 11a, Initially Negotiated Target or Cost*. Enter the cost initially negotiated under the contract before adjustments and exclusive of profit or fee.

(2) *Item 11b, Adjustments Negotiated to Change Scope of Contract*. Enter the net amount (plus or minus) of all adjustments (including terminations) made to the contract cost because of a change in the scope of work. Do not include the amount of overrun or underrun incurred.

(3) *Item 11c, Overrun or Underrun*. Enter as an overrun the amount by which final actual costs exceeded estimated costs including adjustments (the sum of entries in Items 11a and 11b). Enter as an underrun the amount (preceded by a minus sign (—)) by which actual costs were less than estimated costs.

(4) *Item 11d, Final Cost*. Enter the final actual cost allowed under the contract, *i.e.*, the sum of Items 11a, 11b and 11c. As indicated by (f) approximate costs may be used in order to avoid delay in reporting of DD Form 1500.

(n) *Item 12, Contract Profit or Fee*. This item shows the contract profit or fee from initiation through completion including adjustments to the initial profit or fee and incentive earnings or penalties. Penalty amounts shall be indicated by a minus sign before the amount.

(1) *Item 12a, Initially Negotiated Profit or Fee*. Enter the profit or fee initially negotiated under the contract before any adjustments.

(2) *Item 12b, Adjustments Because of Change in Scope of Contract*. Enter the net amount (plus or minus) of all adjustments made to the contract profit or fee as a result of changes in the scope of work.

(3) *Item 12c, Cost Incentive Earnings or Penalty*. Enter, if applicable, the amount earned or the penalty incurred as a result of cost incentive provisions in the contract. Include on this line the amount of any award fee earned on cost plus award fee (CPAF) contract.

(4) *Item 12d, Performance Incentive Earnings or Penalty*. Enter, if applicable, the amount earned or the penalty incurred as a result of performance incentive provisions in the contract.

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(5) *Item 12e, Schedule Incentive Earnings or Penalty.* Enter, if applicable, the amount earned or the penalty incurred as a result of schedule incentive provisions in the contract.

(6) *Item 12f, Value Engineering Earned.* Enter, if applicable, the amount earned as a result of value engineering incentive provisions.

(7) *Item 12g, Final Profit or Fee.* Enter the total amount earned as a profit or fee. If a net loss was incurred by the contractor, enter a minus sign preceding the amount of the loss. Item 12g is the sum of entries in Items 12a, 12b, 12c, 12d, 12e and 12f.

(o) *Item 13, Profit or Fee Percentages.*

(1) *Item 13a, Initially Negotiated Profit or Fee Rate.* Enter to the nearest tenth of a point the percentage obtained by dividing Item 12a by Item 11a.

(2) *Item 13b, Final Profit or Fee Rate.* Enter to the nearest tenth of a point the percentage obtained by dividing Item 12g by Item 11d.

(p) *Item 14, Remarks.* Enter explanations to clarify entries, including if applicable, explanation of the effect of terminations on the profit rate. Also enter the amount of a firm fixed price, or cost no-fee portion excluded from the amounts in Item 11 pursuant to instruction in 21–404(m). Indicate whether the report is based on financial close out data; or if on estimated data, the basis of the estimate.

(q) *Items 15 and 15a, Date Submitted.* Enter in Item 15, if applicable, the date (year, month, day) when the report was submitted by the contract administration office to the purchasing office. Enter in Item 15a the date when the report was submitted in accordance with 21–402(b) by the purchasing office.

(r) *Items 16 and 16a, Typed Name and Signature of Submitting Officers.* Self-explanatory.

(s) *Items 17 and 17a, Telephone Extension of Submitting Officers.* Self-explanatory.

SECTION XXII—SERVICE CONTRACTS

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SECTION XXII

SERVICE CONTRACTS

22-000 Scope of Section. This Section deals generally with the obtaining of services by contract, and specifically with certain types of contracts which can properly be classified as service contracts. It does not cover the services of individuals obtained by direct appointment or through normal Civil Service employment procedures, nor does it cover the obtaining of services by grant.

SERVICE CONTRACTS

Part 1—Service Contracts in General

22-101 Definition of Service Contract.

(a) A service contract is one which calls directly for a contractor's time and effort rather than for a concrete end product. For purposes of this definition, a report shall not be considered a concrete end product if the primary purpose of the contract is to obtain the contractor's time and effort and the report is merely incidental to this purpose.

(b) Service contracts as defined above are generally found in areas involving the following:

(i) maintenance, overhaul, repair, servicing, rehabilitation, salvage, and modernization or modification of supplies, systems and equipment;
(ii) maintenance, repair, rehabilitation, and modification of real property;
(iii) architect-engineering (see Section XVIII);
(iv) expert and consultant services;
(v) the services of DoD-sponsored organizations;
(vi) installation of equipment obtained under separate contract;
(vii) operation of Government-owned equipment, facilities, and systems;
(viii) engineering and technical services;
(ix) housekeeping and base services;
(x) transportation and related services;
(xi) training and education;
(xii) medical services;
(xiii) photographic, printing and publication services;
(xiv) mortuary services;
(xv) communications services;
(xvi) test services;
(xvii) data processing;
(xviii) warehousing;
(xix) auctioneering;
(xx) arbitration;
(xxi) stevedoring; and
(xxii) research and development (see Section IV).

22-102 Personal Services and Nonpersonal Services.

22-102.1 *Policy.*

(a) The Civil Service laws and regulations and the Classification Act lay down requirements which must be met by the Government in hiring its employees, and establish the incidents of employment. In addition, personnel ceilings have been established for the Department of Defense. Except as otherwise authorized by express statutory authority (*e.g.*, 5 U.S.C. 3109 as implemented by the annual Department of Defense Appropriation Act—expert and consultant services (see Part 2)), these laws and regulations shall not be circumvented through the medium of "personal services" contracting, which is the procuring of services by contract in such a manner that the contractor or his employees are in effect employees of the Government. The Contracting Officer is responsible for assuring implementation of this policy by considering the criteria in 22-102.2 below before entering into any service contract, and by obtaining a legal opinion in any doubtful case and in any case where express statutory authority for a personal service contract is to be invoked.

(b) "*Nonpersonal Services.*" On the other hand, contracts for nonpersonal services, properly issued and administered, represent an approved resource for Department of Defense agencies in the accomplishment of their programs.

22-102.2 *Criteria for Recognizing Personal Services.* There are no definitive rules for characterizing particular services as "personal" or "nonpersonal." There are many factors involved, all of which are not of equal importance. The characterization of services in a particular case cannot be made by simply counting factors, but can only be the result of a balancing of all the factors in accordance with their relative importance. The following factors shall be considered, as well as any others which are relevant (some of the following factors include parenthetical explanations or qualifications which indicate the type of judgment that the contracting officer should exercise):

- (i) the nature of the work:
  - (A) to what extent the Government can obtain civil servants to do the job, or whether the contractor has specialized knowledge or equipment which is unavailable to the Government (this is a factor which might be useful in a doubtful case, but should not in its self create doubt about services which are otherwise clearly nonpersonal);
  - (B) to what extent the services represent the discharge of a Governmental function which calls for the exercise of personal judgment and discretion on behalf of the Government (this factor, if present in a sufficient degree, may alone render the services personal in nature); and
  - (C) to what extent the requirement for services to be performed under the contract is continuing rather than short-term or intermittent (this is a factor which might be useful in a doubtful case, but should not in its self create doubt about services which are otherwise clearly nonpersonal);
- (ii) contractual provisions concerning the contractor's employees (in considering the following, it should be noted that supervision and control of the contractor or his employees, if present in a sufficient degree, may alone render the services personal in nature)—
  - (A) to what extent the Government specifies the qualifications of, or reserves the right to approve, individual contractor employees (but granting or denying security clearance and providing for necessary health qualifications are always permissible controls over contractor employees; also, it is permissible to some extent to specify in the contract the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance);
  - (B) to what extent the Government reserves the right to assign tasks to and prepare work schedules for contractor employees during performance of the contract (this does not preclude inclusion in

the contract, at its inception, of work schedules for the contractor, or the establishment of a time of performance for orders issued under a requirements or other indefinite delivery-type contract);

(C) to what extent the Government retains the right (whether actually exercised or not) to supervise the work of the contractor employees, either directly or indirectly;

(D) to what extent the Government reserves the right to supervise or control the method in which the contractor performs the service, the number of people he will employ, the specific duties of individual employees, and similar details (however, it is always permissible to provide in the contract that the contractor's employees must comply with regulations for the protection of life and property; also, it is permissible to specify a recommended, or occasionally even a minimum, number of people the contractor must employ, if this is necessary to assure performance—but in that event it should be made clear in the contract that this does not in any way minimize the contractor's obligation to use as many employees as are necessary for proper contract performance);

(E) to what extent the Government will review performance by each individual contractor employee, as opposed to reviewing a final product on an overall basis after completion of the work;

(F) to what extent the Government retains the right to have contractor employees removed from the job for reasons other than misconduct or security;

(iii) other provisions of the contract—

(A) whether the services can properly be defined as an end product;

(B) whether the contractor undertakes a specific task or project that is definable either at the inception of the contract or at some point during performance, or whether the work is defined on a day-to-day basis (however, this does not preclude use of a requirements or other indefinite delivery-type contract, provided the nature of the work is specifically described in the contract, and orders are formally issued to the contractor rather than to individual employees);

(C) whether payment will be for results accomplished or solely according to time worked (this is a factor which might be useful in a doubtful case, but should not in its self create doubt about services which are otherwise clearly nonpersonal); and

(D) to what extent the Government is to furnish the office or working space, facilities, equipment, and supplies necessary for contract performance (this is a factor which might be useful in a doubtful case, but should not in its self create doubt about services which are otherwise clearly nonpersonal); and

(iv) administration of the contract—
  (A) to what extent the contractor employees are used interchangeably with Government personnel to perform the same functions;
  (B) to what extent the contractor employees are integrated into the Government's organizational structure; and
  (C) to what extent any of the elements in (ii) and (iii) above are present in the administration of the contract, regardless of whether they are provided for by the terms of the contract.

22-102.3 *Examples of Personal Versus Nonpersonal Services.* It is to be emphasized that the examples below are for illustrative purposes only and are not to be used as the basis for a determination in any specific case.

(a) *Personal.* The following are examples of personal services contracts:
  (i) contract for the furnishing of ordinary, day-to-day stenographic and secretarial services in a Government office under Government supervision exercised either directly or through a contractor supervisor, even if only for a peak work period of two weeks;
  (ii) contract for preparation of a staff type report on the operation of a particular Government office or installation, where no specialized skills are required and the report would ordinarily be prepared by the regular officers or employees of the office or installation even if there is to be no Government supervision and even if payment is to be for an "end product" report;
  (iii) contract for the furnishing of persons to perform the various day-to-day functions of contract administration for a Government agency, even if there is no Government supervision; and
  (iv) contract with an accounting firm to come in and perform day-to-day accounting functions for the Government.

(b) *Nonpersonal.* The following are examples of nonpersonal service contracts:
  (i) contract for field engineering work requiring specialized equipment and trained personnel unavailable to the Government but not involving the exercise of discretion on behalf of the Government, where the contractor performs work adequately described in the contract free of Government supervision;
  (ii) contract with an individual for delivery of lectures without Government supervision, at specific places, on specific dates, and on a specialized subject, even if payment is by the hour;
  (iii) contract for janitorial services, where the contract provides for specific tasks to be performed in specific places, free of Government direction, supervision, and control over the contractor's employees, at a fixed price for the work to be performed; and
  (iv) research and development contract, providing a fixed price for a level of effort, as long as the work is performed by the contractor independently of Government direction, supervision, and control.

22-102.4 ***Determination by Contracting Officer; Documentation of Contract File.***

(a) At the time the contracting officer receives, through a purchase request or other document, any requirement for the procurement of services, he shall determine whether the procurement is proper in the light of the personal services policy in 22-102. He shall not proceed without documenting the contract file with:

(i) unless exempted by (b), a brief memorandum of his determination that the services are nonpersonal, together with his reasons and all the facts which bear on the personal-nonpersonal question, or a memorandum of his determination that procurement of the services is expressly authorized by statute, regardless of whether personal; and

(ii) an opinion of counsel obtained pursuant to 22-102.1 in any doubtful case and in any case where express statutory authorization is invoked; and

(iii) any further documentation which may be required by Departmental implementation.

(b) The following are exempted from the documentation requirements imposed by (a)(i):

(i) contracts for construction and contracts for architect-engineering services for preparation of designs, plans, drawings and specifications awarded pursuant to Section XVIII procedures; and

(ii) simplified small purchases issued pursuant to Section III, Part 6, procedures.

22-103 Competition in Service Contracting. The provisions of statute and of this Regulation requiring competition are fully applicable to service contracts. Therefore, unless otherwise provided by statute, contracts for services shall be awarded through formal advertising, whenever "feasible and practicable under the existing conditions and circumstances." When formal advertising is not feasible and practicable and negotiation is authorized, competition still must be obtained to the maximum practicable extent, except for procurements not in excess of $500. The method of obtaining competition will vary with the type of service being procured, and will not necessarily be limited to price comparison alone.

22-104 Conflict of Interest in Service Contracting. In procuring services by contract, the applicable provisions with respect to conflicts of interest shall be observed (see 1-113 and Appendix G) and when required by those provisions, an appropriate conflict of interest clause shall be incorporated into the contract.

22-105 Small Business Certificate of Competency. In those service contracts where the highest competence obtainable is a requirement of the Government, the small business certificate of competency procedures may not be applicable (see 1-705.4(b)).

22-106 Service Contract Act of 1965. Implementation of the Service Contract Act of 1965 (P.L. 89-286), which provides for minimum wages and fringe benefits as well as other conditions of work under certain service contracts, is contained in Section XII, Part 10.

22-107 Contract Term.

(a) The term of a service contract that is funded by annual appropriations shall not extend beyond the end of the fiscal year current at the beginning of the contract term, unless the contract falls into one of the following categories:

(i) a one-year contract for maintenance of tools or facilities if authorized under the current Department of Defense Appropriations Act;

(ii) a multi-year service contract within the coverage of 1-322.6;

(iii) a one-year requirements or indefinite quantity contract, as defined in 3-409.2 and 3-409.3, in which any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (see 1-318); or

(iv) a contract for expert or consultant services entered into in accordance with 22-204.2, or for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

(b) Any contract entered into under the authority of (a)(iii) above shall contain the "*Availability of Funds*" clause in 7-104.91(b).

22-108 Prohibition Against Contracts With Organizations Which Provide Quasi-Military Armed Forces For Hire. 5 U.S.C. 3108 prohibits contracts with "Pinkerton Detective Agencies or similar organizations." This prohibition applies only to entering into a contract with an organization or its employees, regardless of the character of the contract to be performed, if such organization offers quasi-military armed forces for hire. An organization which provides guard or protective services does not thereby become a "quasi-military armed force," even if the individual guards are armed, and even though the organization may also be engaged in the business of providing general investigative or "detective" services.

Part 2—Procurement of Expert or Consultant Services

22-200 Scope of Part. This Part sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of expert or consultant services (including stenographic reporting services) from individuals and from firms, regardless of whether personal. This Part does not govern employment of individual experts or consultants by excepted appointment; the requirements for such employment are set forth in personnel regulations of the Civil Service Commission and of the respective Departments.

22-201 Statutory Authority.

(a) Authority for the procurement by contract of expert and consultant services is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Departments pursuant to the authority contained in the General Provisions of the annual Department of Defense Appropriation Act.

(1) 5 U.S.C. 3109 provides:

> "(a) For the purpose of this section—
>
> (1) "agency" has the meaning given it by section 5721 of this title; and
>
> (2) "appropriation" includes funds made available by statute under section 849 of title 31.
>
> (b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—
>
> (1) the provisions of this title governing appointment in the competitive service;
>
> (2) chapter 51 and subchapter III of chapter 53 of this title; and
>
> (3) section 5 of title 41, except in the case of stenographic reporting services by an organization.
>
> However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services."

(2) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 is section 601 of the Act of September 29, 1965 (P.L. 89-213; 79 Stat. 873), which provides:

> "During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: *Provided*, That such contracts may be renewed annually."

(b) Except in the case of stenographic reporting services, contracts with individuals or firms for expert and consultant services are usually negotiated, normally under the authority of 10 U.S.C. 2304 (a) (4), as implemented by 3-204.

22-202 Definition of Experts and Consultants.

(a) The terms "experts" and "consultants" shall include those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service.

(b) Stenographic reporting services are included in the term "expert or consultant services" for purposes of procurement by contract under this Part.

22-203 Policy.

(a) The proper use of experts and consultants is a legitimate and economical way to improve Government services and operations. Activities of the Departments can be strengthened by utilizing the highly specialized knowledge and skills of such individuals. Accordingly, the services of experts and consultants may be used at all organizational levels to help managers achieve maximum effectiveness and economy in their operations. However, experts and consultants shall not be used to perform duties which can be performed by regular employees, to fill positions which call for full-time continuing employees, or to circumvent competitive civil service procedures and Classification Act pay limits.

(b) The following are examples of services which may be procured from experts or consultants by contract:

(i) specialized opinion unavailable in the Department;

(ii) outside points of view, to avoid too limited judgment, on critical administrative or technical issues;

(iii) advice on developments in industrial and other research;

(iv) for especially important projects, opinions of noted experts which are highly important to the success of an undertaking;

(v) the advisory participation of citizens to develop or implement Government programs that by their nature or by statute call for citizen participation;

(vi) the services of specialists who are not needed full-time, who cannot serve regularly or full-time, or whose full-time employment is uneconomical to the Government.

22-204 Limitations on Use of Expert or Consultant Authority.

22-204.1 *General.* Obtaining the benefit of expert or consultant services by contract, pursuant to 5 U.S.C. 3109, is subject to the following limitations:

(i) The employment of individual experts or consultants shall be by contract only when the services required cannot be obtained by excepted appointment in accordance with personnel regulations.

(ii) The nature of the duties to be performed must be temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no contract shall be entered into for longer than one year at a time. (However, contracts may be renewed annually; see 22-212.)

(iii) Procurement of the services must be advantageous to the national defense.

(iv) Such services shall not be used when existing facilities of the particular Department are adequate or when personnel with the necessary skills can be obtained through normal civil service appointment procedures.

(v) Procurement of such services by contract shall not be used as a means of circumventing manpower space ceilings.

22-204.2 *Contracts Crossing Fiscal Years.* Because the implementing appropriation act authorizing the procurement of expert and consultant services expires and must be renewed each fiscal year (see 22-201), a contract under this authority shall not cross fiscal years—even in cases where funds could properly be obligated to a contract calling for services in parts of two fiscal years—unless it calls for an end product which cannot feasibly be subdivided for separate performances in each fiscal year. No contract shall cross fiscal years unless authorized to do so in accordance with 22-205(c)(viii). This paragraph shall apply equally to contracts with individuals and contracts with firms.

22-205 Authorization To Enter Into Contracts: "Determinations and Findings".

(a) All contracts to be entered into pursuant to 5 U.S.C. 3109 for expert or consultant services must be authorized in writing by a Determinations and Findings (D&F) signed in accordance with Departmental regulations. Ordinarily each contract shall be separately authorized. However, when the determinations can appropriately be made with respect to a class of contracts, the authorizing official may issue blanket authority for that class of contracts by signing a class D&F.

(b) Each D&F shall authorize a contract or class of contracts to be entered into during a stated period not to exceed one year, which ordinarily shall be within one fiscal year. A D&F may be issued during one fiscal year to authorize a contract or class of contracts to be entered into during the following fiscal year, provided the determinations are reasonably expected to hold true at the time the contract or contracts are to be entered into and provided that either the D&F is made contingent upon enactment of implementing legislation or implementing legislation for the next fiscal year has already been enacted.

(c) Each D&F shall contain the following:

- (i) a brief description of the services authorized to be procured, including for individual D&Fs the estimated time of performance and the estimated cost;
- (ii) determination by the authorizing official with respect to the particular contract or class of contracts that:
  - (A) the duties to be performed are of a temporary or intermittent nature;
  - (B) procurement of the services is advantageous to the national defense;
  - (C) the existing facilities of his Department are inadequate to furnish the services;
  - (D) it is not feasible to obtain personnel with the necessary skills through normal civil service appointment procedures; and
  - (E) any other determination required by the statutes under the authority of which the procurement is made;
- (iii) a citation of statutory authority, namely 5 U.S.C. 3109 and (except where (vii) below, is applicable) appropriate implementing legislation; the latter may be the current annual Department of Defense Appropriation Act, a current temporary Department of Defense appropriation enactment, or other appropriate legislation;

(iv) a grant of authority to procure the required services and, if desired, to renew the contract;

(v) the condition that the necessary funds must be available for obligation;

(vi) the condition that no contract may be entered into for longer than one year at a time;

(vii) an added condition, in cases where the D&F covers a period for which implementing legislation has not yet been enacted, that at the time the procurement is entered into there must be in effect a law authorizing the procurement pursuant to 5 U.S.C. 3109 and requiring no further Secretarial action than that required by the implementing legislation current at the time the D&F is issued;

(viii) where appropriate, authorization to contract across fiscal years (see 22-204.2), and in such cases, where the implementing authority cited is annual legislation, an added condition that in the event the implementing authority is not renewed for the following fiscal year the contracting officer shall terminate the contract in accordance with its terms; and

(ix) the date of expiration of the authority granted by the D&F.

22-206 Requests for Determinations and Findings. Requests for authorization to procure expert or consultant services pursuant to 5 U.S.C. 3109, whether from individuals or from firms, must contain statements required by Departmental regulations to support the determinations. The responsibilities of the various organizational levels in the Departments with respect to requests for D&Fs are also set forth in Departmental regulations.

22-207 Contracts With Individual Experts or Consultants.

22-207.1 *Method and Amount of Payment.* The contract may provide for compensation at rate for time actually worked (*e.g.*, amount per day, per week, per month, etc.), or it may provide for performance of a specific task at a fixed price, or it may provide for nominal compensation. The amount or rate of payment will be determined on a case-by-case basis, taking into account (among any other relevant factors) the relative importance of the duties to be performed, the stature of the individual in his specialized field, comparable pay for positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid other experts or consultants for similar work. Normally, compensation will be at the per diem equivalent of salaries in the GS-13 to GS-15 range. Compensation for personal services is subject to the limitation in 22-210.

22-207.2 *Benefits.* When an individual expert or consultant is furnishing personal services and the contract provides for a regularly scheduled tour of duty during each administrative work week, the contract shall also provide that the contractor will be accorded the same paid annual and sick leave benefits as those to which he would be entitled under Departmental personnel regulations if he were employed by excepted appointment during the period of the contract. The contract may also provide for similar benefits (*e.g.*, paid holidays, paid administrative leave), but these shall in no event exceed those to which the individual would be entitled under excepted appointment. No benefits shall be accorded the contractor which are not specifically provided for in the written contract. The contracting officer shall effect necessary coordination with the cognizant civilian personnel office (see 22-207.5).

22-207.3 *Taxes*. When the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment), and federal income withholding tax. It may also be necessary to report or withhold state income tax under 5 U.S.C. 84b. The contracting officer shall take appropriate steps in coordination with the cognizant civilian personnel office to have deductions and reports made where required by law.

22-207.4 *Conflict of Interest*. The contracting officer shall assure himself that individual experts or consultants who are to render personal services under contract familiarize themselves with Executive Order 11222, May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," 30 Federal Register 6469 (1965), and that they comply with it and with Departmental regulations implementing it.

22-207.5 *Administrative Treatment*. Individual experts or consultants who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointment. Also, the cognizant civilian personnel office must maintain certain records on individual experts and consultants who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office before award of a contract for personal services and may also designate the appropriate personnel officer as his representative for the purpose of administering contract provisions relating to benefits, obtaining necessary data from the contractor for tax withholding purposes, and administering applicable conflict of interest provisions.

22-208 Contracts With Firms for Expert or Consultant Services. Contracts with firms for expert or consultant services ordinarily should deal only with rights and obligations as between the Government and the firm, and should not deal with the question of compensation by the firm of the individuals it assigns to the work or with any other rights or obligations as between the firm and these individuals. However, where the services to be rendered are personal services, payment for the services of each expert or consultant is subject to limitation in 22-210.

22-209 Contracts for Stenographic Reporting Services. Stenographic reporting services normally are provided by regular civilian employees appointed under the usual civil service procedures. However, under certain circumstances these services may be procured by contract from individuals or firms pursuant to 5 U.S.C. 3109, as where there are variable requirements or insufficient qualified personnel and necessity or economy to the Government demands procurement by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (*e.g.*, number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary materials (typewriter, paper, bindings, etc.). These contracts are subject to all the provisions of this Part.

SERVICE CONTRACTS

22-210 Limitation on Payment for Personal Services.

(a) When the expert or consultant services being procured pursuant to 5 U.S.C. 3109 personal services, payment for the services of each expert or consultant shall not exceed the highest rate fixed by the Classification Act pay schedules for grade GS-15—or, in the case of professional engineering services primarily involving research and development or professional services involving physical or natural sciences or medicine, the highest rate payable to a GS-18. In addition, the contract may provide for such per diem and travel expenses as would be authorized for a Government employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station.

(b) If a fixed-price contract which is predominantly for nonpersonal services also includes personal services, the requirements of (a) above are applicable to the personal services if it is feasible and practicable to price them separately.

22-211 Modification of Contracts. When supplemental agreements or change orders are required which substantially change the basis upon which the D&F was made, such as to revise substantially the scope of work or time limitations, or to apply additional funds, authorization shall be requested in the same way as authorization to procure the services by contract in the first place.

22-212 Renewal of Contracts.

22-212.1 *General.* A contract may provide for renewal—for a maximum of one year each time—by written notification to the contractor from the contracting officer.

22-212.2 *Applicable D&F Required.* A contract shall not be renewed unless either a new D&F has been issued, or the D&F authorizing the original contract (or a prior renewal) has not yet expired and specifically authorizes the renewal, or an unexpired class D&F covering that type of contract is in effect.

22-212.3 *Other Requirements.* Renewal of a contract legally creates a new contract; therefore, renewal of a contract is improper unless all the requirements and limitations of this Part have been complied with.

Part 3—Engineering and Technical Services

22-301 Definition of Contractor Engineering and Technical Services. *Contractor engineering and technical services* consist of the furnishing of advice, instruction, and training to Department of Defense personnel, by commercial or industrial companies, in the installation, operation, and maintenance of Department of Defense weapons, equipment, and systems. This includes transmitting the knowledge necessary to develop among those Department of Defense personnel the technical skill required for installing, maintaining, and operating such equipment in a high state of military readiness. These services are subdivided into the following categories.

(a) *Contract plant services* (CPS) are those engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities.

(b) *Contract field services* (CFS) are those engineering and technical services provided on site at defense locations by the trained and qualified engineers and technicians of commercial or industrial companies.

(c) *Field service representatives* are those employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

22-302 Contracting for Engineering and Technical Services.

22-302.1 *General.* Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

22-302.2 *Personal Services.* Notwithstanding 22-102, in the event unusual requirements involving essential mission accomplishment necessitate the procurement of contract field services (CFS) which appear to be personal services, those services may be obtained by contract for an interim period if that particular procurement is specifically authorized by the Assistant Secretary of Defense (Manpower).

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Part 4—Stevedoring Contracts

22–400 Scope of Part. Procurement procedures peculiar to stevedoring are set forth in this Part. This Part, however, does not contain or cross reference all provisions of this Regulation applying to service contracts which shall be adhered to where applicable. Contract clauses for stevedoring contracts are set forth in Section VII, Part 10.

22–401 Definition of Stevedoring. Stevedoring is the loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel, or the breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

22–402 Method of Procurement. Procurement of stevedoring services shall be made by formal advertising pursuant to 10 U.S.C. 2304(a) whenever such method is feasible and practicable under existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements of Section III, Part 2.

22–403 Type of Contract. Normally, stevedoring services will be contracted for by means of an indefinite quantity type contract. Contracts for single job stevedoring services may be made when no indefinite quantity contract is available to fulfill the requirements.

22–404 Technical Provisions.

22–404.1 *Conditions for Use*. Since conditions vary at different ports and sometimes within the same port, standard technical provisions covering all phases of stevedoring operation are impractical. If car loading and unloading or other dock and terminal work will be performed under a stevedoring contract, technical provisions appropriate for such dock and terminal work should be added to the contract as separate items of work.

22–404.2 *Clauses*. The clauses containing technical provisions in 7–1001 are normally made a part of every stevedoring contract. While these clauses will cover most situations adequately, the various provisions may be deleted, added to, modified, or rearranged as necessary to meet local conditions.

22–405 Evaluation of Bids and Proposals.

22–405.1 *General*. Contractors' bids and proposals shall include tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions. Schedules of man-hour rates which apply to services not covered by commodity rates or to work performed under hardship conditions also shall be included.

22–405.2 *Analysis of Tonnage or Commodity Rates*. The price quoted for handling a ton (weight or measurement) of a specified commodity is a commodity rate. This rate is computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in one hour. The gang cost consists of the following:

(i) the total hourly wages paid to the men in the gang in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port;

(ii) payments for workmen's compensation, social security taxes, unemployment insurance, taxes, and liability and property damage insurance; and

(iii) general and administrative expenses and profit.

The direct costs shall be verified by the contracting officer. Since the negotiated stevedoring contract is designed to minimize the contractor's risk, the contractor's gang cost should contain no allowance for contingencies and the profit rate should be less than is granted in the usual fixed-price contract. The estimated number of tons of the specified commodity which can be handled in one hour is based on the contractor's experience and should be compared with the records of experience at the requiring activity. The evaluation of bids and proposals shall include an extension of the quoted commodity rates against the payable tonnage estimated to be handled for each commodity.

22–405.3 *Analysis of Man-hour and Equipment Rental Rates.* Man-hour rates shall be established for every category of labor expected to be necessary to perform services required under the contract. The development of man-hour rates follows a pattern similar to the method used in arriving at a gang cost. Specifically, it is composed of the basic wage rate of the man, workmen's compensation, social security taxes, insurance, general and administrative expenses, and profit. The evaluation of bids and proposals shall include an extension of the quoted man-hour rates against the estimated man-hour requirements for each artisan classification. Rates for equipment rental shall be extended against estimated equipment hours.

22–406 Award of Contract. The award shall be made to the responsible contractor who offers the lowest overall acceptable bid or proposal after evaluating the total estimated cost of tonnage to be moved at commodity rates and estimated cost at man-hour rates.

SERVICE CONTRACTS

Part 5—Procurement of Mortuary Services

22-500 Scope of Part. Procurement procedures peculiar to contracts for mortuary services (the care of remains) of military personnel within the United States are set forth in this Part. These procedures may be used as guidance in areas outside the United States in procuring such services for both deceased military and civilian personnel. Uniform contract clauses for care of remains contracts are set forth or referenced in Section VII, Part 12.

22-501 Method of Procurement.

22-501.1 *Procurements by Requirements Type Contract.* By agreement among the military activities involved, one military activity in each geographical area shall contract for the estimated requirements for the care of remains for all activities in the area. Procurement shall be by use of a requirements type contract (see 3-409.2) when the estimated annual requirements for the individual activity concerned, or for the activities using one contract, are ten or more. Except where negotiation is authorized under Section III, Part 2, such contracts shall be formally advertised.

22-501.2 *Procurements by Purchase Order.* Where no contract exists, such services shall be obtained by use of DD Form 1155 (Order for Supplies and Services/Request for Quotations) and DD Form 1155r "General Provisions" (see 3-608), inserting in the Schedule the clauses prescribed in 3-608.2(b)(1)(xii).

22-501.3 *Solicitation Planning.* Bids or offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

22-501.4 *Area of Performance.* Each contract for care of remains (except Port of Entry Requirements contracts) shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

22-501.5 *Distribution of Contracts.* In addition to normal contract distribution, three copies of each contract shall be furnished to each activity authorized to use it, and two copies to each of the following:

(i) HQDA (DAAG-PED)
Alexandria, VA 22331

(ii) Bureau of Medicine and Surgery
Department of the Navy (MED 3134)
23rd and E Streets, N.W.
Washington, D.C. 20372

(iii) Headquarters, AFMPC/MPCCM
Randolph AFB, TX 78150

22-502 Solicitation Provision. Advertised solicitations for mortuary services contracts shall contain the provision in 7-2003.58. This provision shall be appropriately modified for use in negotiated solicitations.

22-503 Schedule Formats.

22-503.1 *Schedule Format for Other Than Port of Entry Requirements Contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations for other than port of entry requirements. The estimated quantities are only illustrative.

ITEM NO.	SUPPLIES, SERVICES AND TRANSPORTATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	For a standard size casket, supplies and services in accordance with specifications.	10	each		
2	For a wood shipping case, standard size, in accordance with specifications (for use with Item 1 above, as required).	2	each		
3	For an oversize casket, supplies and services in accordance with specifications.	4	each		
4	For an oversize shipping case, in accordance with specifications (for use with Item 3 above, as required).	1	each		
5	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" clause of this contract.	200 Loaded miles	(Loaded mile)		
	Additional items may be added (in numerical sequence), as required.				

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22-503.2 *Schedule Format for Port of Entry Requirements Contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations for port of entry requirements. The estimated quantities are only illustrative.

ITEM NO.	SUPPLIES, SERVICES AND TRANSPORTATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	For a standard size casket, supplies and services in accordance with specifications.	20	each		
2	For a shipping case, standard size, in accordance with specifications (for use with Item 1 above).	17	each		
3	For an oversize casket, supplies and services in accordance with specifications.	5	each		
4	For a shipping case, oversize, in accordance with specifications (for use with Item 3 above).	3	each		
5	For inspection and/or reprocessing of casketed remains prior to delivery to selected common carrier.	18	each		
6	For transportation of remains between ____________ and processing facility.	81	(Loaded trip each)		
7	For transportation of remains between processing facility and selected common carrier or National Cemetery as indicated below: X ____________________ Y ____________________ Z ____________________	 9 10 9	(Loaded trip each)		
8	For transportation of remains between processing facility and any point within 100 miles as designated by the contracting officer.				
	Additional items may be added (in numerical sequence), as required.				

SERVICE CONTRACTS

Part 6—Shipment or Storage of Personal Property

22-600 Policy.

22-600.1 *Annual Contracts.* Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of formal advertising. Such contracts shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to 1 November of each year.

22-600.2 *Area of Performance.* The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

22-600.3 Solicitation Provisions. The solicitation shall include the provisions in 7-2003.59 and 7-2003.77.

22-600.4 *Use of Pre-Bid Conference.* In accordance with provisions of 2-207, the use of a pre-bid conference shall be considered and is encouraged.

22-600.5 *Appropriate Post-Award Orientation of Contractors.* Contracting officers will assure that in accordance with Section I, Part 18, each successful contractor is provided appropriate post-award orientation.

22-600.6 *Maximum Requirements—Minimum Capability.* The quantities established by the contracting officer in the Estimated Quantities clause in 7-1601.7 must be realistic. He must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to insure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

22-601 Procedure.

22-601.1 *Coordination.*

(a) Single CONUS military installations or activities assigned total multi-service personal property areas of responsibility in accordance with Chapter 11, Personal Property Traffic Management Regulation DoD 4500.34R shall contract for all estimated requirements within their assigned areas of responsibility. When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(b) The Commander, Military Traffic Management Command (MTMC), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

22-601.2 *Additional Services and Excess Requirements.*

(a) *Excess Requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see Section III, Part 6).

(b) *Additional Services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residence outside area of performance, extra long carry, carrying of pianos or organs, reweighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(i) inclusion as items within the contract; *provided*, they are not used in the evaluation of bids (see 22-602(b)); and

(ii) using small purchase procedures (see Section III, Part 6).

Prices for additional services may be predetermined with the contractor or negotiated on a case by case basis.

(c) *Ordering of Additional Services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

22-601.3 *Contract Distribution.* In addition to the distribution requirements of 20-401, one copy of each contract will be furnished as follows:

(a) CONUS Personal Property Shipping Activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE-PP, Bayonne, New Jersey 07002; and Commander, Military Traffic Management Commander, Western Area, ATTN: MTW-PP, Oakland, California 94626.

(b) Personal Property Shipping Activities in the European and Pacific areas forward to the appropriate Military Traffic Management Commander Field Office. Other overseas personal property shipping activities forward to Commander, Military Traffic Management Command, ATTN: MT-PPQ, Washington, D.C. 20315.

22-602 Schedule Formats.

(a) The following schedules shall be inserted in all solicitations for the preparation of personal property for shipment or storage and performing intracity or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added.

(b) Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than (c) below, of schedule format will be processed as a request for deviation in accordance with 1-109.

(c) When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format.

22-602.1 *Schedule of Items.*

(NOTE: Wherever FED SPEC PPP-B-580 containers are specified in this Schedule, containers listed in MTMC Pamphlet 55-12, dated 12 October 1978, may be substituted.)

SCHEDULE I
OUTBOUND SERVICES

Item 1. *Complete Service—Outbound* (*HHGs*). Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipping containers (*Shipping Container FED SPEC PPP-B-580 or Air Cargo*) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old markings, marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipments on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any one lot, loose articles shall be packed in the said containers. Before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under *Item 3*.

Area ________________.

	Est Annual Qty	Unit	Unit Price	Total
a. At owner's residence:				
(1) Container, FED SPEC PPP-B-580	______	GCWT	______	______
(2) Air Cargo Container	______	GCWT	______	______
b. At Contractor's Facility:				
(1) Container, FED SPEC PPP-B-580	______	GCWT	______	______
(2) Air Cargo Container	______	GCWT	______	______

(*Repeat a. and b. above for additional areas as needed.*)

Item 2. *Outbound* (*HHGs From Non-Temporary Storage*). Service shall be the same as *Item 1* except that: (i) household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility; and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under *Item 3*.

Area ________________

	Est Annual Qty	Unit	Unit Price	Total
a. Pickup by Contractor:				
(1) Container, FED SPEC PPP-B-580	______	GCWT	______	______
(2) Air Cargo Container	______	GCWT	______	______
b. Delivered to Contractor:				
(1) Container, FED SPEC PPP-B-580	______	GCWT	______	______
(2) Air Cargo Container	______	GCWT	______	______

(*Repeat a. and b. above for additional areas as needed.*)

Item 3. *Complete Service-Outbound* (*HHGs-Overflow Articles and HHGs Shipments Requiring Other Than PPP-B-580 or Air Cargo Containers*). Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.

Area ________________

	Est Annual Qty	Unit	Unit Price	Total
a. Overseas Pack:				
(1) Overflow and Oversize Articles*	______	GCWT	______	______
(2) Other Shipments	______	GCWT	______	______
b. Domestic Pack:				
(1) Overflow and Oversize Articles *	______	GCWT	______	______
(2) Other Shipments	______	GCWT	______	______

(*Repeat a. and b. above for additional areas as needed*).

*The overflow box will be of lesser size than specified in Fed Spec PPP-B-580 and must be limited to one per shipment. Oversize boxes are limited to use for items which exceed the dimensions of and cannot be accommodated in a household goods shipping container (Fed Spec PPP-B-580), therefore requiring a specially built box. One or more of this type may be required per shipment. These boxes will be constructed in accordance with Military Specification PPP-B-601, Style A or B and, in addition, will be caulked during assembly.

Item 4. *Complete Service—Outbound (Unaccompanied Baggage)*. Service includes inventorying, packing in Government approved containers, weighing, strapping, obliteration of old marking and marking of unaccompanied baggage. Service shall be performed at owner's residence. (Service may be performed at Contractor's facility when ordered by the Contracting Officer.) Drayage, if required, will be ordered by the Contracting Officer.

Area ....

	Est Annual Qty	Unit	Unit Price	Total
a. Government-Furnished Containers:				
(1) Drayage Included	______	GCWT	______	______
(2) Drayage Not Included	______	GCWT	______	______
b. Contractor-Furnished Containers:				
(1) Drayage Included	______	GCWT	______	______
(2) Drayage Not Included	______	GCWT	______	______

(*Repeat a. and b. above for additional areas as needed.*)

Item 5. *Outbound Service—Unaccompanied Baggage Packed by Owner*. Service shall include weighing, strapping, banding, obliterating old markings, and marking. Service may include (when necessary) containerization in outer shipping containers as ordered by the Contracting Officer. Drayage, if required, will be ordered by the Contracting Officer.

Area ....

	Est Annual Qty	Unit	Unit Price	Total
a. Containerization Not Required:				
(1) Drayage Included	______	GCWT	______	______
(2) Drayage Not Included	______	GCWT	______	______
b. Containerization Required:				
(1) Drayage Included	______	GCWT	______	______
(2) Drayage Not Included	______	GCWT	______	______

(*Repeat a. and b. above for additional areas as needed.*)

Item 6. *Goods of Extraordinary Value (Hi-Value)*. Service shall include inventorying (each item), packing in Government-approved, Contractor-furnished container(s), marking, banding, weighing and cubing at owner's residence. In jurisdictions where local law prohibits the certification of portable scales, a weight certificate will not be required. Drayage, if required, will be ordered by the Contracting Officer.

Area ....

	Est Annual Qty	Unit	Unit Price	Total
a. Drayage included	________	GCWT	________	________
b. Drayage not included	________	GCWT	________	________

(*Repeat for additional areas as needed.*)

See clause entitled "*Drayage*" for explanation.

Item 7 *Storage*. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges shall not commence earlier than the sixth (6th) workday following date of transportation officer's receipt of notification of completion of containerization service. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area ....

Est Annual Qty	Unit	Unit Price	Total
________	GCWT	________	________

(*Repeat for additional areas as needed.*)

Item 8. *Containers*. Under this item, the Contractor shall supply the following types of containers when ordered:

Area ....

	Est Annual Qty	Unit	Unit Price	Total
Container (Fed Spec PPP-B-580)	________	ea	________	________
Air Cargo (Fed Spec PPP-B-580)	________	ea	________	________

(*Repeat for additional areas as needed.*)

Item 9. *Remarking and Coopering Service.*

a. *Remarking of Shipments for Reconsignment or Diversion*. Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

Area ....

Est Annual Qty	Unit	Unit Price	Total
________	ea piece	________	________

(*Repeat for additional areas as needed.*)

b. *Coopering*. Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed 50% of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair, such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

Area ....

Est Annual Qty	Unit	Unit Price	Total
________	ea piece	________	________

Repeat for additional areas as needed).

Items 10–14 Reserved (See 22–602(c).)

RECAPITULATION SCHEDULE I

Schedule Total — Area .... $..............

(*Repeat for each area listed.*)

SERVICE CONTRACTS

SCHEDULE II INBOUND SERVICES

Item 15. *Complete Service—Inbound (HHGs).* Service shall include drayage to owner's residence, decontainerization and unpacking of loaded containers of household goods and placing goods in appropriate rooms as directed by owner or his designated representative, servicing appliances, assembly of any disassembled articles and removing shipping containers, barrels, boxes/crates and debris from owner's residence and drayage of empty containers to Contractor's or Government facility as directed by Contracting Officer.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(Repeat for additional areas as needed.)

Item 16. *Complete Service—Inbound (HHGs).* Service shall be same as Item 15 except that drayage of shipment to residence is not required.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(Repeat for additional areas as needed.)

Item 17. *Complete Service Inbound (HHGs).* Service shall be the same as *Item 15* except removal of items from outer container will be at the Contractor's facility and articles will be drayed to owner's residence. This service will be performed only upon order of the Contracting Officer.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(Repeat for additional areas as needed.)

Item 18. *Inbound Service—Contractor Facility (HHGs).* Service shall include removal of items from outer shipping container(s) at the Contractor's facility and delivery of articles to property owner, motor van carrier or commercial non-temporary storage Contractor at the Contractor's facility.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(Repeat for additional areas as needed.)

Item 19. *Complete Service—Extra-Ordinary Value Items.* Service includes decontainerization and unpacking of containers at owner's residence, and removal of shipping containers and debris from the residence. Drayage, if required, will be ordered by the Contracting Officer.

Area ....

	Est Annual Qty	*Unit*	*Unit Price*	*Total*
a. Drayage Included	________	GCWT	________	________
b. Drayage Not Included	________	GCWT	________	________

(Repeat for additional areas as needed.)

NOTE: See clause entitled "*Drayage*" for explanation.

SERVICE CONTRACTS

Item 20. *Complete Service—Inbound* (*Unaccompanied Baggage*). Service shall include drayage of unaccompanied baggage containers to owner's residence, unpacking of containers and removal of all shipping containers and debris from the residence.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(*Repeat for additional areas as needed.*)

Item 21. *Complete Service—Inbound* (*Unaccompanied Baggage*). Service shall be same as *Item 20* except that drayage to residence is not required.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(*Repeat for additional areas as needed.*)

Item 22. *Inbound Service—Contractor Facility* (*Unaccompanied Baggage*). Service shall include removal of unaccompanied baggage from outer shipping containers for pickup by the owner at the Contractor's facility.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(*Repeat for additional areas as needed.*)

Item 23. *Storage*. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges under this item shall not commence earlier that the sixth (6th) work day following date of notification to transportation officer of arrival of shipment. Storage charges apply for each 30 day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	GCWT	________	________

(*Repeat for additional areas as needed.*)

Item 24. *Remarking/Coopering Service.*

a. *Remarking of Shipments for Reconsignment or Diversion*. Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
________	ea piece	________	________

(*Repeat for additional areas as needed.*)

b. *Coopering*. Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed fifty percent (50%) of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
______	ea piece	______	______

(*Repeat for additional areas as needed.*)

Items 25–28 Reserved (See 22–602(b).)

RECAPITULATION SCHEDULE II

Schedule Total—Area .... $..................

(*Repeat for each area listed.*)

SCHEDULE III INTRA-CITY AND INTRA-AREA MOVERS

Item 29. *Complete Service for Intra-City and Intra-Area Moves.* Service shall include a premove survey, servicing of appliances, packing at owner's residence to protect household goods properly during transit, tagging of items, inventorying, loading, weighing, drayage, unloading, unpacking, and placing of each article in owner's residence (new) as directed by owner or his designated representative and removal of all empty containers and materials from residence. Service shall be in conformance with provisions of MIL-P-22084 (S&A), except that all service shall be performed within times stipulated in clause entitled "Time Requirements."

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
______	NCWT	______	______

(*Repeat for additional areas as needed.*)

Item 30. *Storage.* Storage of articles shall be furnished incident to services performed under *Item 29* when ordered by the Contracting Officer. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

Area ....

Est Annual Qty	*Unit*	*Unit Price*	*Total*
______	NCWT	______	______

(*Repeat for additional areas as needed.*)
(Insert when required)

RECAPITULATION SCHEDULE III

Schedule Total—Area .... $.................

(*Repeat for each area listed.*)

Part 7—Contracts for Laundry and Dry Cleaning Services

22-700 Scope of Part. This Part contains instructions for the preparation and use of contracts for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations. Clauses for laundry and dry cleaning service contracts are set forth or referenced in Section VII, Part 14.

22-701 General Policy. Except for laundry and dry cleaning services acquired under small purchase procedures, the normal method of contracting for laundry and dry cleaning services shall be by formal advertising.

22-702 Selection of Count of Articles or Weight (unsorted or pre-sorted) Basis. Laundry services in support of hospitals may be acquired on the basis of (i) a count of articles or (ii) by bulk weight. Acquisitions by weight may be on either a pre-sorted (bag type) or unsorted (simple bulk weight) basis. The basis of acquisition shall be at the discretion of the requiring activity in conjunction with advice of the contracting officer based on consideration of such factors as price, administrative costs, aseptic requirements, risk of contamination/cross-contamination, volume and nature of articles to be serviced. All other laundry and dry cleaning services shall be acquired on a count of articles basis. Contracts on a count of articles basis shall include provisions substantially as set forth in 7-1401.5(a) and 7-1401.6(a). Contracts on a bulk weight basis shall include provisions substantially as set forth in 7-1401.5(b) (for bag type laundry), 7-1401.5(c) (for unsorted laundry), 7-1401.6(b), and 7-1401.7.

22-703 Solicitation Provisions. Solicitations for laundry and dry cleaning services shall include a provision similar to those set forth in 7-2003.60(a) for services to be provided on a count of articles basis and 7-2003.60(b) for services to be provided on a bulk weight basis.

22-704 *Schedule Format.* Set forth below are examples of schedule formats suitable for use in solicitations. The estimated quantities are only illustrative.

(a) Count of Articles.

Item No.	Item	Estimated Quantity for Contract Period	Unit	Unit Price	Estimated Amount
	LOT I ***Laundering***				
0001	Pillowcase (P)	100,000	each		
0002	Nurses Uniform, with belt (S) (P) (OH)*	25,000	each		
0003	Slippers	50,000	pair		
	LOT II ***Dry Cleaning***				
0004	Curtains	500	each		
0005	Trousers (P)	5,000	each		
	LOT III** ***Individual Laundry***				
0006	Individual bundle (25 piece)	1,000	each		
0007	Individual bundle (15 piece)	1,000	each		
***					

* (S)—Starched, (P)—Pressed, (OH)—Item delivered on hanger (hanger included in Unit Price), and ( ) Other instructions as required.

** Include in contracts containing the Individual Laundry clause in 7-1401.12.

*** See Section XX, Part 3, for Line Item Numbering Procedures.

(b) Bulk Weight (Unsorted).

Item No.	Item	Estimated Quantity of Serviced Laundry for Contract Period	Unit	Unit Price	Estimated Amount
0001	Laundry Services for the items listed below.*	100,000	lb.		

*The following articles are to be serviced. Separate prices are not to be submitted for these articles.

	Towels, hand	40,000	lb.	NSP	
	Sheets	40,000	lb.	NSP	
	Wash Cloths	20,000	lb.	NSP	

(c) Bulk Weight (Bag Type).

Item No.	Item	Estimated Quantity of Serviced Laundry for Contract Period	Unit	Unit Price	Estimated Amount
0001	BAG TYPE I (Patient items: sheets, pillow cases.)	200,000	lb.		
0002	BAG TYPE II (Terry Type: Towels, wash cloths.)	100,000	lb.		
0003	BAG TYPE III (Surgical items: masks, caps, shirts.)	50,000	lb.		
0004	BAG TYPE IV CONTAMINATED (May include any or all items in above listed bag types.)	75,000	lb.		

SERVICE CONTRACTS

Part 8—Procurement of Refuse Service

22-800 Scope of Part. Procurement procedures peculiar to contracts for refuse service within the United States are set forth in this Part. This Part does not apply to utility service contracts for refuse service entered into with a city or other local government organization. These procedures may be used as guidance in procuring such services outside the United States. Clauses for refuse service contracts are set forth or referenced in Section VII, Part 18.

22-801 Definition of Refuse Service. Refuse service is the removal of garbage, ashes, debris, rubbish and other similar waste material. See 7-1801.1.

22-802 Method of Procurement. Refuse service shall be procured by a firm fixed-price contract, which shall be either (i) at a total contract price when a single price for contract performance is appropriate or (ii) a requirements type contract specifying a firm unit price when anticipated abnormal fluctuations in requirements makes that type more advantageous to the Government.

Part 9—Educational Service Agreements

22-900 Scope of Part. This Part prescribes procurement procedures for agreements with established schools, colleges, or universities, or other educational institutions for educational services using the institution's facilities, standard courses, and prevailing tuition and fees applicable to the general public. As used in this Part, "facilities" does not include the institution's dining rooms or dormitories. Also, as used in this Part, "fees" does not include charges for meals or lodging. Tuition assistance agreements, *i.e.*, payment by the Government of partial tuition under the off-duty educational program, are not included under this Part. Except in connection with the detailing of commissioned officers to law schools pursuant to 10 U.S.C. 2004, no agreement shall be made under this Part which will provide for, or results in, payment of Government funds for tuition or other expenses in connection with training in any legal profession. The format and clauses for educational service agreements are set forth in 16-501.

22-901 Definition of Educational Service Agreement. An educational service agreement is one which calls for educational services to be provided under the following conditions:

(i) the Government pays all normal tuition and fees for educational services provided to a student by the contractor under its regularly established schedule of tuition and fees applicable to all students generally; and

(ii) enrollment is at the contractor's institution under his regular rules and in courses and curricula which the institution offers to all students meeting the contractor's admission requirements, with no special courses or special fees applicable to Government students.

22-902 Method of Procurement.

(a) An educational service agreement is not a contract, but is a continuing offer which may be accepted by the Government by the placing of requests for services. Each request for services results in a separate contract.

(b) The terms of the educational service agreement provide that requests for services are negotiated under the authority of 10 U.S.C. 2304(a)(5) when the contractor is in the United States, its possessions, or Puerto Rico, or (6) if elsewhere.

22-903 Duration. Educational service agreements shall be for an indefinite duration and shall remain in effect until terminated. However, the issuing activity shall establish procedures to review each educational service agreement at least once each year (with due regard to the institution's academic calendar and at least 30 days before the beginning of a term) for the purpose of incorporating changes to reflect requirements of any Statute, Executive Order, or this regulation. If the parties do not agree on such required changes, the contracting officer shall terminate the agreement in accordance with its terms.

SERVICE CONTRACTS

Part 10—Communication Services

22-1001 Applicability of Part. This part applies to procurement of communications services from communications common carriers regulated by the Federal Communications Commission or an appropriate Governmental regulatory body. In addition, except as otherwise specifically provided, this part provides guidelines for the procurement of all other communications services (*e.g.*, from nonregulated common carriers, noncommon carriers and foreign carriers) but is not mandatory for use in such procurements.

22-1002 Definitions.

(a) *Communications Services*. Communication services are those services provided by all types of systems and facilities connected therewith that employ electric or electromagnetic signals to transmit information between two or more points by means of radio, wire, cable, satellite, and other media. Included are telephone, telegraph, teletypewriter, remote writing, remote display, data transmission, facsimile and television transmission services, as well as terminal devices, switches, private branch exchanges, transmission facilities and other components of the systems that supply these services. Also included are all local, post, camp, station or long distance services as well as all fixed or mobile facilities that are interconnected to systems providing these types of services.

(b) *Common Carrier*. Any person, partnership, association, joint-stock company, trust governmental body, or corporation engaged in the business of providing communications services to the general public, normally authorized or franchised by the Federal Communications Commission (FCC) or other appropriate governmental regulatory body is a common carrier.

(c) *Noncommon Carrier*. Any entity other than a common carrier which offers communications facilities, services or equipment for lease is a noncommon carrier.

(d) *Foreign Carrier*. Any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by an appropriate United States governmental regulatory body and not doing business as a citizen of the United States, which provides communications services outside the territorial limits of the United States is a foreign carrier.

(e) *Appropriate Governmental Regulatory Body*. The term "appropriate governmental regulatory body" encompasses the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this part.

22-1003 Policy. In accordance with instructions contained in Department of Defense directives and implementing Departmental regulations concerning the operation of commercial and industrial type activities, and specifically with those concerning the sources for communications services, the Department of Defense generally procures communications services of a kind offered by common carriers, including equipment and facilities incidental to those services, from common carriers in accordance with tariff provisions, and at tariff rates established with the Federal Communications Commission (FCC) or with other appropriate governmental regulatory bodies unless cost or operational requirements dictate otherwise.

22-1004 Regulatory Bodies.

(a) The Federal Communications Commission (FCC) and other appropriate governmental regulatory bodies generally publish rules and regulations governing the operations of common carriers and prescribe accounting principles to be employed in the establishment of rates. Notwithstanding other provisions of this Regulation, the regulations, practices, and decisions of the FCC and other appropriate governmental regulatory bodies concerning rates, cost principles, and accounting practices shall be recognized in the procurement of communications services from common carriers. With respect to those issues concerning common carrier services (i) on which the appropriate governmental regulatory body has not expressed itself, (ii) over which the appropriate governmental regulatory body has declined jurisdiction, or (iii) as to which there is no appropriate governmental regulatory body to make a decision, specific provisions should be made in the contract for adoption of FCC-approved practices or the generally accepted practices of the industry.

(b) Since the Department of Defense frequently requires unusual or special communications services advancing the "state of the art," Defense Department activities frequently move into areas which the cognizant governmental regulatory bodies have not explored. In such situations, the Defense Department frequently is the sole or primary user of many of a given common carrier's offerings. In addition, because of the large volume or normal services which the Defense Department requires, the day-to-day decisions of governmental regulatory bodies may have a vast dollar impact upon it. It is not Defense Department policy to duplicate the efforts of appropriate governmental regulatory bodies or to act as a second regulatory body. On the other hand, the Defense Department's self interest requires that it act as an informed and intelligent consumer, seeing to it that its side of the case is presented to the cognizant bodies and working with the common carriers to ensure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. Every effort should be made to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the Government's position in advance. Nevertheless, in the event actions short of litigation are not productive or just, reasonable or otherwise lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, legal actions should be initiated and vigorously pursued. All contacts with the regulatory bodies should be through cognizant counsel in accordance with established Departmental and Defense Communications Agency procedures.

(c) Upon receipt of tariff information received in accordance with 7-1702.11, the contracting officer shall immediately provide copies to the cognizant counsel.

22-1005 Sources for Communications Services.

22-1005.1 *Common Carriers.*

(a) Generally, communication services shall be procured from the communication common carrier authorized by the appropriate regulatory body to operate within the service area in which the services are required.

(b) Although normally only one carrier is authorized to provide a specific type of service at any given location, there are locations at which no single communication common carrier has the exclusive right to provide the required service. When this is the case and more than one common carrier is authorized and can provide the required service, the procurement shall be made from the source offering the lowest cost to the Government, if practicable. If this is not practicable, the contract file shall be documented as to the reasons for selection of another source (*e.g.*, unique ability to meet service date; more timely and effective maintenance; security reasons; system integrity). In any event, special assembly items and entire communications systems shall be procured on a competitive basis to the maximum extent practicable; and every effort should be made to exclude from the service contract any provisions which would require the Government to lease from the source of service any associated and related items such as circuits, circuit extensions, and terminal equipment.

22-1005.2 *Noncommon Carriers.* While communications services generally shall be procured from common carriers, they may be procured from noncommon carriers when equipment and the services function as a complete communication system or are an integral part of a communication system. Equipment and services shall be considered an integral part of a communication system if the combination of equipment and services is necessary to perform the desired services.

22-1005.3 *Foreign Carriers.* The procurement of communication services within or between foreign countries and the procurement from a foreign carrier of communication services from a foreign country to the United States present problems beyond the scope of this part. Frequently, foreign carriers are owned by the Government of the country in which they operate; and their methods of doing business are prescribed by the foreign Government. In many countries, an international agreement with the host country prescribes guidelines for how the Defense Department will obtain communication services. In addition, there are frequently severe problems with taxes on communications in foreign countries. In other countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for communication services. As a general rule in foreign countries, rates and practices should be spelled out in as much detail as possible in a contractual document. It consistently has been Defense Department policy not to pay discriminatory rates and to pay no more for communication services in a foreign country than does the military of that country. Special problems with communications procurement in foreign countries should be channeled to higher headquarters for resolution with the assistance of State Department representatives as appropriate.

22-1006 Who May Procure Communication Services.

(a) The general authority of the Head of a Procuring Activity contained in 1-401 includes the procurement of communication services. In addition, the Administrator, General Services Administration, has delegated to the Secretary of Defense under the terms of the Federal Property and Administrative Services Act, as amended, authority to enter into contracts for communication services extending beyond the fiscal year but not longer than ten years under the following circumstances:

(i) the Government obtains lower rates, larger discounts, or more favorable conditions of service than those available under a contract for a definite term not extending beyond the current fiscal year; or

(ii) nonrecurring or termination charges payable under contracts for a definite term not extending beyond the current fiscal year are eliminated or reduced; or

(iii) the carrier refuses to render the desired service except under contract for a definite term extending beyond the current fiscal year.

(b) The Secretary of Defense has delegated the authority delegated to him by the Administrator, GSA, to the Secretaries of the Military Departments and the Director, Defense Communications Agency, who have in turn delegated it to the following (with power of redelegation):

(i) for the Department of the Army: The Commanding General, United States Army Communications Command; and the Commanding General, United States Continental Army Command;

(ii) for the Department of the Navy: The Commander, Naval Facilities Engineering Command;

(iii) for the Department of the Air force: The Deputy Chief of Staff, Systems and Logistics; and the Director of Procurement Policy, DCS/S&L, Hq. USAF;

(iv) for the Defense Communications Agency: The Chief, Defense Commercial Communications Office;

(v) for the Defense Supply Agency: for the leasing of local telecommunications facilities and services, Commanders of DSA centers, depots, and DCAS regions; and

(vi) for the Defense Nuclear Agency: for contracts not in excess of $1,000,000, The Commander, Field Command, DNA.

(c) The ten-year limitation of (a) above does not apply to "general contracts" (see 22-1008) but to obligating the Government for a longer period than ten years by orders placed under the general contract.

22-1007 Cost or Pricing Data.

(a) Rates or preliminary estimates quoted by a common carrier for tariffed services are considered to be prices set by regulation within the provisions of Public Law 87-653, even if the tariff will not be established until after execution of the contract. Accordingly, except as provided in (b), common carriers are not required to submit cost or pricing data prior to award of contracts for tariffed services. On the other hand, rates or preliminary estimates quoted by a common carrier for nontariffed service or by a noncommon carrier for any service are not considered to be prices set by regulation; and the provisions of Public Law 87-653 and 3-807.3 shall be applied accordingly.

(b) Even when not required by Public Law 87-653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine

BEST DOCUMENT AVAILABLE

that the prices are reasonable on the basis of price analysis (see 3-807.2(a)). However, certified cost or pricing data shall not be required to support annual recurring costs below $5,000 and nonrecurring costs or basic termination liabilities below $10,000. Situations in which cost or pricing data may be found necessary within the above policy are:

- (i) a tariff, whether filed or contemplated to be filed is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);
- (ii) a tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;
- (iii) more than one commercial source (one or more of which is a noncommon carrier) can offer the desired service but price competition is not considered adequate;
- (iv) to support the reasonableness of special assembly rates and charges;
- (v) to support the reasonableness of special construction and equipment charges;
- (vi) to support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or
- (vii) to support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination of Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(c) Cost or pricing data need not be obtained for each order in the case of services obtained by delivery order under a general call type contract which is negotiated for use by all Government ordering activities and includes detailed and approved price schedules as a part of the general contract.

(d) As to the form and detail of cost or pricing data, the following will apply:

- (i) For data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier in question; *provided*, this form and detail is sufficient for the Government to make an adequate evaluation.
- (ii) For data submitted by other than common carrier, the data should be that required by 3-807.

(e) In the case of noncommon carriers or common carriers quoting for services not to be furnished pursuant to tariff, the procuring activity shall require that the cost or pricing data be accompanied with a certificate as required in 3-807.6. In the case of a common carrier furnishing service pursuant to a tariff filed or to be filed, the procuring activity shall require that data submitted pursuant to (b) above be accompanied with a certificate that to the best of the company's knowledge the data are accurate, complete, and current and a statement that either:

- (i) the rates for services in question are based on these data which will be used or are currently being used to justify the tariff for such service; or
- (ii) the rates for services in question are not based on these data but are based upon filed tariffs.

The procuring activity shall inform carriers required to furnish cost or pricing data under this subparagraph (e) that the data and certifications will be used by the Government, if appropriate, in any subsequent proceedings relative to this tariffed service.

(f) If any noncommon carrier or any common carrier providing a service not to be furnished pursuant to tariff refuses to furnish cost or pricing data required under this paragraph, applications for waiver shall be processed in accordance with 3-807.3.

22-1008 Type of Contract.

22-1008.1 *General.* Generally, the procurement of communication services is facilitated by a contractual arrangement which (i) permits the activities served to order services directly from time to time as specific requirements are develop; and/or (ii) provides a written instrument of understanding between the Department of Defense or a procurement activity and the contractor which sets forth the basis under which future procurements will be entered into as required during the term of the agreement.

22-1008.2 *General Agreements.* General agreements, referred to as "general contracts" within the communications industry, are widely used to facilitate awards for communication services. Such an instrument is not a contract, but rather represents a written instrument of understanding executed between a procurement activity and a communications contractor which sets forth the negotiated contract clauses and other matters which shall be applicable to future procurements entered into between the parties during the term of the agreement. (See Section VII, Part 17, for contract clauses.) The general agreement together with the order issued thereunder (see 22-1008.3) represents the contract. General agreements shall not be used in any manner to restrict available competition. All general agreements will be executed in the name of the United States Government.

22-1008.3 *Communication Service Authorization* (*CSA*). DD Form 428, Communication Service Authorization (CSA), or the electronic data processing substitute (see 16-505) shall be used to order services under the general contract and to modify, cancel, or terminate services when a CSA has been used to establish the service. As a general rule, prices should be established prior to authorizing the contractor to begin work. However, when the contractor is allowed to begin work prior to pricing in accordance with this paragraph, an estimated price or ceiling shall be included; and the contractor and the contracting officer shall proceed with definitive pricing as soon as practicable. In addition, a CSA may be issued which includes a ceiling or a series of ceilings for the stated services. Normally, this type of CSA is called a "maximum limit authorization" in the communications industry. This maximum limit authorization also may provide, in addition to the established ceilings, limited authority to designated individuals to effect modifications in service within the dollar ceilings by the use of work orders designated for this purpose. Each CSA issued under a general agreement shall be subject to such reviews, approvals and determinations and findings specified in this Regulation as would be applicable if the CSA were a contract entered into apart from the general contract.

22-1008.4 *Federal Supply Schedule Contracts.* General Services Administration Federal Supply Schedule contracts covering communication services, including equipment and facilities incidental to the services, are optional for use by the Department of Defense and may be used in accordance with 5-104 when it is not more advantageous to negotiate a separate contract.

22-1009 Funding of Communication Service Authorizations (CSAs) Under General Contracts.

(a) Funding is a comptroller responsibility and shall be handled in accordance with appropriate Department of Defense comptroller related directives and Departmental implementations thereof. The guidelines in (b) through (e) below are provided for the contracting officer's information.

(b) In procurements of communication services, unlike other types of procurements, obligations are usually recorded when the service starts or if and when a cancellation or termination is ordered. Thus funds are not obligated by the "general contract," but are ordinarily obligated by CSAs issued under the "general contracts" (see 7-1702.8).

(c) Each individual CSA establishes a basis for the obligation of funds to cover recurring charges for services to be provided during the fiscal year in which the CSA is issued, together with such onetime charges as are applicable to those services.

(d) The same CSA continues to be the basis for the obligation of funds when the same services are required to be continued into subsequent fiscal years. However, obligation of funds for recurring charges for such subsequent fiscal years must be subject to the availability of appropriations therefor; and in the event funds are not appropriated, a cancellation or termination CSA must be issued.

(e) The contracting officer, through his comptroller, must insure that funds are available at the time service is provided or at the time a cancellation or termination CSA is issued. Paragraph 1-318 does not apply to the issuance of CSAs.

22-1010 Special Construction.

22-1010.1 *General.*

(a) *Special Construction*, as defined by tariffs, normally involves the furnishing of some special service or facility by a common carrier incident to the performance of the basic service. Under a given tariff, this may include (i) moving or relocating specified equipment, (ii) providing temporary facilities, (iii) expediting provision of facilities, or (iv) providing channel facilities which must be specially constructed to meet the requirements of the Government. The procurement of "special construction," as that term is used in the communication industry, shall be governed by the provisions of this part and shall not ordinarily be subject to the provisions of Section XVIII.

(b) Special construction costs may take the following forms:

- (i) contingent liability for utilizing the services for a shorter period of time than the specified minimum to reimburse the contractor for his unamortized nonrecoverable costs and usually expressed in terms of a termination liability, as provided in the contract or by tariff;
- (ii) a onetime special construction charge;
- (iii) recurring charges for constructed facilities;
- (iv) a minimum service charge;
- (v) an expediting charge; or

(vi) a move or relocation charge.

(c) When a common carrier submits a proposal or quotation of charges which indicates that special construction will be necessary, he shall be required to submit a detailed special construction proposal as well. All special construction proposals shall be analyzed to (i) determine the adequacy of the proposed construction; (ii) disclose excessive or duplicative construction; and (iii) when different forms of charge are possible, insure that the form most advantageous to the Government is provided for.

(d) When possible, special construction charges should be analyzed and approved prior to provision of the service. If, because of operational requirements, prior approval is not possible and a contractor is authorized to proceed, a ceiling cost for the special construction shall be imposed. Special construction charges must be approved and authorized prior to total payment thereof.

(e) Special construction provisions shall be administered by the contracting officer issuing the CSA. This involves administration of the cost and payment provisions, recording the unamortized termination liabilities (if any), and monitoring minimum service charges (MSC) reuse of MSC facilities—all in coordination with the requiring Department, office or agency and with the Defense Contract Audit Agency, as appropriate.

22-1010.2 *Applicability of Construction Labor Standards to CSAs for Special Construction.*

(a) The construction labor standards in Section XVIII, Part 7, ordinarily do not apply to "special construction." However, if the special construction includes construction (as defined in 18-101.1) of a public building or public work, the construction labor standards may be applicable. Applicability must be determined under 12-106.

(b) Individual CSAs which are subject to construction labor standards under 12-106 shall specifically recite that fact.

22-1011 Special Assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling or wiring of an item or items of equipment to provide service that cannot be provided with equipment normally employed for general use.

(b) Special assembly rates and charges shall be based on estimated costs and shall be negotiated prior to commencement of service whenever possible. When it is not possible to negotiate in advance, the initial rates and charges shall be preliminary and tentative only and shall be subject to adjustment to the extent appropriate at the time that final rates and charges are negotiated.

22-1012 Cancellation and Termination.

(a)(1) *Cancellation* is the discontinuation of a requirement subsequent to the placing of an order, but prior to initiation of service.

(2) *Termination* is the discontinuation of a service for the convenience of the Government after the service has been initiated.

(b) Cancellation or termination charges shall be determined in accordance with the provisions of the applicable tariff or contract.

(c) At the conclusion of a cancellation or termination settlement negotiation, the contracting officer shall document the contract file as to the principal elements involved in the settlement in sufficient detail to establish the reasonableness of the proposed settlement and in a manner which will enable reviewing authorities to understand the appropriateness of the proposed settlement.

(d) Pursuant to the Cancellation or Termination of Orders clause, partial payments on cancellation or termination claims may be made prior to settlement under the applicable policy and procedures of 8–213.1.

SECTION XXIII—SUBCONTRACTING POLICIES AND PROCEDURES

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SECTION XXIII

SUBCONTRACTING POLICIES AND PROCEDURES

23-000 Scope of Section.

(a) This section sets forth policies and procedures for the evaluation, review, and approval of contractors' purchasing systems and requirements for consent to proposed subcontracts. These techniques are required only where the work is complex, the dollar value is substantial, and there is not adequate price competition. Reliance upon a contractor's approved purchasing system will usually obviate the need for reviewing and consenting to individual subcontracts.

(b) Although there is a relationship among the review and approval of purchasing systems, consent to subcontracts, and the evaluation of and agreement upon contractors' proposed make-or-buy programs (Section III, Part 9), each is a separate and distinct action, and the factors to be considered in each vary.

SUBCONTRACTING POLICIES AND PROCEDURES

Part 1—Review of Contractor's Purchasing Systems

23-100 Scope of Part. This part sets forth the requirements for conducting a contractor purchasing system review (CPSR) under the direction of a purchasing system analyst (PSA). The review provides:

(i) a means for evaluating the efficiency and effectiveness with which the contractor spends Government funds;

(ii) the basis for the ACO to grant, withhold, or withdraw approval of the contractor's purchasing system;

(iii) reliable current information to the PCO on the contractor's purchasing system for use in source selection, determining the appropriate type of contract, and establishing profit and fee objectives;

(iv) an independent review of the contractor's purchasing system to optimize its effectiveness in complying with Government policy; and

(v) current purchasing system information for appropriate DoD activities in areas of Government interest. (See DAR Supplement 1 for procedures for conducting a CPSR.)

The term "contractor," as used in this part, means a separate entity of a contractor, such as an affiliate, division, or plant, which performs its own purchasing. The term "CPSR" includes the evaluation of purchasing of materials, services, subcontracting, and subcontract management; and in the case of major system acquisition programs, as defined in 1-201.41, it includes the management of the acquisition of material and services through purchase, from development of the requirement through completion of subcontract performance.

23-101 Review Criteria.

(a) *Initial Review.* An initial review is a complete, intensive, first-time analysis of a contractor's purchasing system. An initial review shall be made when the contractor's negotiated sales to the Government are expected to exceed $10 million during the next 12 months. Such sales include: prime contracts, subcontracts under Government prime contracts, and modifications to competitively awarded contracts and formally advertised contracts (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public or is set by law or regulation). Generally, a CPSR is not performed for a specific contract.

(b) *Subsequent Review*. A subsequent review is an analysis of a contractor's purchasing system, performed to validate the adequacy of the system.

(1) If a contractor's purchasing system is approved, the ACO shall follow the criteria set forth in 23-101(a) in requesting a subsequent review. Variations in approach may be necessary in reviewing extremely large organizations heavily involved in particularly high dollar value systems contracts, as defined in 1-201.41, versus the review of contractors who should have the benefit of the program but are not systems oriented, although they contain a mixture of Government and commercial business and contracts from various Government departments and agencies.

(2) Plants in which there is a full-time resident PSA shall receive (i) an initial review and (ii) continuing surveillance equivalent to a subsequent review on an annual basis or continuing surveillance with subsequent reviews at 3-year intervals.

(3) Plants in which there is no resident PSA shall receive (i) an initial review, (ii) surveillance through onsite visits (23-108), and (iii) a subsequent review in alternate years. The contracting officer may call for a subsequent review prior to the regularly scheduled review if circumstances indicate the need.

(4) Subsequent reviews of contractors' purchasing systems are not required at locations that are Contractor Weighted Average Share (CWAS) qualified. Contracting officers must assure that such contractors use purchasing techniques that are compatible between their commercial or FFP competitive business and other Government business. If a CWAS-qualified contractor's purchasing system is approved, based on an initial or subsequent review, the system remains approved as long as the contractor remains CWAS qualified unless the ACO withdraws approval, based on a special review or a biennial compatibility surveillance review (see 23-108(f)).

(c) *Special Reviews*. A special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or subsequent review. The ACO, or the PSA with the concurrence of the ACO, may initiate special review of any contractor's purchasing system in connection with deficiencies revealed as a result of:

(i) the initial or subsequent review, or continuing indepth surveillance;

(ii) the review of subcontracts submitted under the notification and consent to subcontract requirements of contract clauses;

(iii) major changes in the contractor's purchasing policies, procedures, or key personnel;
(iv) changes in plant workload or type of work; or
(v) information provided by Government personnel.

In conducting special reviews, the same criteria used in initial or subsequent reviews shall be applied to the area being examined. The summary report format will be used as appropriate.

(d) *Followup Review.* A followup review is an investigation performed when a contractor's purchasing system approval is withheld or withdrawn, including contractors who are CWAS-qualified, to determine whether a contractor has implemented the recommendations of the ACO and corrected the deficiencies revealed by any purchasing system review. The techniques used in making an initial or subsequent review are employed in the followup review. If approval of a contractor's purchasing system is withheld or withdrawn, a followup review shall be made as soon as evidence is received from the contractor that the factors leading to the action have been corrected. Whether this followup review consists of a complete reexamination of the contractor's purchasing system or is confined to the areas found deficient shall be a matter of judgment and will depend on the time lapse between the notice to the contractor of withholding or withdrawal of approval and the followup review. The summary report format will be used as appropriate.

23-102 Staff Surveillance. Each Military Department and the Defense Logistics Agency will establish controls to assure maintenance of a viable surveillance program (23-108).

23-103 Extent of Review.

(a) Generally, a review under the criteria of 23-101 shall consist of a complete evaluation of the contractor's purchasing system. This review shall be made in accordance with DAR Supplement 1, and special attention given to:

(i) the degree of price competition obtained;
(ii) pricing policies and techniques, including methods of obtaining accurate, complete, and current cost and pricing data, and certification as required (3-807 and 7-104.42);
(iii) the methods of evaluating subcontractors' responsibility (1-906);
(iv) the treatment accorded affiliates and other concerns having close working arrangements with the contractor;
(v) the extent to which assurance is obtained that principal subcontractors apply sound pricing practices and a satisfactory purchasing system in dealing with lower tier subcontractors;

(vi) the appropriateness of the type of subcontract used (see Section III, Part 4);

(vii) practices pertaining to small business, labor surplus area programs, and socio-economic programs (Section I, Parts 7 and 8);

(viii) the management of major subcontract programs;

(ix) compliance with the Cost Accounting Standards in awarding subcontracts (see Section III, Part 12);

(x) the evaluation of make-or-buy program (see Section III, Part 9); and

(xi) practices pertaining to subcontractor progress payments (Appendix E, Part 500).

(b) In reviewing the contractor's purchasing system, a determination shall be made as to whether subcontracting is done competitively to the maximum practicable extent. This requires ascertaining whether—

(i) a sufficient number of sources are solicited; and

(ii) subcontracting procedures provide other elements of adequate and effective price competition, including adequate descriptions of any factors to be evaluated and evaluation of all offers on a common basis.

(c) Decisions as to whether commercial items conform to the purpose and intent of the exemption from the requirement for a certificate of current cost and pricing data shall be analyzed.

23-104 Contractor Purchasing System Review Boards.

(a) When deemed necessary, Contractor Purchasing System Review Boards may be established in accordance with departmental procedures.

(b) If no board is to be convened, the report shall be forwarded directly to the ACO by the CPSR team captain.

(c) If it is determined that a review board is necessary, the report of the CPSR team shall be reviewed and evaluated by the board, which shall make appropriate recommendations to the ACO.

23-105 Granting, Continuing, Withholding, and Withdrawing Approval.

(a) The ACO is responsible for granting, continuing, withholding, or withdrawing approval of a contractor's purchasing system. The ACO shall approve a purchasing system only after a CPSR discloses that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests. Approval of a system shall be withheld when there are major weaknesses or when the contractor is unable to provide sufficient information upon which an affirmative determination can be based. Conversely, approval shall not be withheld because of minor weaknesses. An approval may be withdrawn at any time on the basis of a determination that there has been a deterioration of the contractor's purchasing system, or otherwise to protect the interests of the Government.

(b) The ACO should make an annual determination as to the approval status of a contractor's purchasing system except CWAS-qualified contractors, based on either a subsequent or surveillance review. However, it is not the intent of the Government, through no fault of the contractor, to unnecessarily interrupt continuance of a purchasing system approval. Therefore, the ACO may extend the approval of a contractor's purchasing system for an additional 90 days. Further extensions by the ACO will require written approval by the ACO's CPSR program management organization.

(c) The ACO shall give the contractor written notice granting, continuing, withholding, or withdrawing approval of his purchasing system. If the contractor's system is approved, the notification of approval shall be in substantially the following form:

> TO: .... (*Contractor*)
>
> As a result of the .... (*recent review or surveillance*) of your purchasing system at .... (*identify the plant or plants involved*, you are advised of .... (*insert "my approval" or "the continuation of the prior approval"*) of your purchasing system. This approval, effective .... (*date*) is for a period of 1 year and applies to all of your contracts at the above plant or plants with the Department of Defense. This approval waives, to the extent provided in your contracts, the contractual requirements for prior consent by the Contracting Officer to the placement of certain subcontracts. In addition, it waives, to the extent provided in fixed-price contracts, the requirement for advance notification to the Contracting Officer of your intent to place certain subcontracts.
>
> This approval does not eliminate the requirement under cost-reimbursement contracts for advance notification to the Contracting Officer of your intent to place proposed subcontracts where such notification is required, nor does it affect any contractual provisions that require prior consent to the placement of subcontracts, notwithstanding this approval of your purchasing system. (*If special*

requirements for continued notification and prior consent for one or more classes of subcontracts are to be imposed in accordance with (d) below, such special requirements should be inserted here.)

This approval of your purchasing system—

(i) shall not be construed to be a determination of the acceptability of any amount paid under any subcontract, or to relieve you of any contractual requirement, except as specified herein;

(ii) shall automatically terminate upon the expiration date specified above unless the expiration date is extended;

(iii) shall automatically terminate when any significant change occurs in your purchasing system unless the change has received my approval; and

(iv) may be withdrawn at any time at my discretion.

You are to be commended that your purchasing system merits Government approval, and you are urged to continue your efforts to maintain an acceptable purchasing system.

....
(*Contracting Officer*)

(d) In exceptional circumstances, the approval may require notification and prior written consent for one or more classes of subcontracts which, because of their critical nature or particular circumstances, call for extraordinary Government surveillance.

(e) An exit conference shall be held with the contractor at completion of the in-plant review. At that time, the contractor should be given the review team's recommendations signed by the ACO. The contractor shall be requested to furnish his plan for accomplishing the necessary actions within 15 days. If the ACO does not wish to provide recommendations at this time or is not present at the exit conference, the review team will provide the contractor a list of deficiencies and inform the contractor that the ACO's official recommendations will be provided within 10 days and that the contractor will be expected to respond within 10 days thereafter.

(f) If at any time other than during a CPSR recommendations are made for improvement of an approved system, the contractor shall be requested to furnish within 15 days of such notification a concurrence or position with respect to the recommendations.

23-106 Distribution of Reports.

23-106.1 *Complete Reports (Parts I and II).* After receipt of the complete report from the PSA, the ACO, within 5 days, shall review and evaluate the report, prepare a letter to the contractor stating the status of the purchasing system, and provide copies of the report and the letter to:

(i) the cognizant Contract Audit Office;
(ii) activities prescribed by the cognizant Military Department and the Defense Logistics Agency;
(iii) the contractor; and
(iv) such others as approved by the ACO.

23-106.2 *Summary Reports (Part I only).* One copy of the summary report shall be sent to a contracting office when requested. Also, where there is a resident PSA assigned to the contractor's plant, the cognizant CAS organization has the option of preparing only a summary report, which shall be distributed in accordance with 23-106.1. A copy of the ACO's letter to the contractor, setting forth the status of the purchasing system, shall be attached to the summary report.

23-107 Disclosure of Approval Status of a Proposed Subcontractor's Purchasing System. Upon request, a contractor may be informed that the purchasing system of a proposed subcontractor has been approved under Government prime contracts and/or major subcontracts, if such is the case. The contractor shall be cautioned that approval status is furnished only as of the date of notification and that the Government will not keep the contractor advised of any change in the approval status of the proposed subcontractor's purchasing system. If the proposed subcontractor's purchasing system has not been examined or approved, the contractor shall be advised only that the approval status of the proposed subcontractor's system will not be furnished.

23-108 Surveillance of the Contractor's Approved Purchasing System.

(a) It is the responsibility of the Government to maintain a sufficient level of surveillance to assure that the contractor is effectively managing the purchasing program. With the assistance of the PSA, subcontract management personnel, technical specialists, and the contract auditor, the ACO shall develop a surveillance plan designed to avoid duplication of effort. The surveillance plan shall specifically include the contractor response for corrective action to the recommendations made by the ACO as a result of an initial or indepth subsequent purchasing system review and the Government's planned surveillance tests of the contractor's corrective implementation. The surveillance plan shall provide procedures for informing the contractor of surveillance findings and related recommendations; for followup, as necessary, to effect recommended improvements; and, when warranted by the findings, for rescinding approval of the contractor's purchasing system. The contractor must make available the necessary procedures and data to permit adequate surveillance.

(b) The surveillance plan shall encompass pertinent phases of the contractor's purchasing system *(Preaward/Postaward/Performance/Contract Completion)* and pertinent operations which impact the contractor's purchasing and subcontracting. As considered necessary, surveillance shall include:

(i) determination and limitation of requirements;
(ii) advance planning (market testing, source development, performance evaluations, program objectives, make-or-buy);
(iii) solicitation of proposals (development of solicitations, statement of work, specifications/drawings, facility surveys, financial analysis, preaward audits, terms and conditions, selection of contract type, establishing a competitive base, socio-economic consideration, bidders lists, presolicitation and indoctrination of potential bidders);
(iv) proposal evaluations (cost, technical, and management considerations);
(v) source selection (restrictive clauses, flowdown of prime contract provisions, compliance with Public Law 87-653 "Truth in Negotiations Act," compliance with Public Law 91-379 "Cost Accounting Standards," cost/price analysis/assist audits and cost studies, progress payments to subcontractors, changes in technical content of statement of work, fact finding and bidders conference);
(vi) provisioning, management influence and overriding consideration, documentation, compliance with 1-906 "Subcontractor Responsibility";
(vii) management approvals;
(viii) advance notification and consent requirements;
(ix) early definition (TWX and letter contracts);
(x) change control (timely and effective action);
(xi) engineering;
(xii) schedules;
(xiii) production;
(xiv) material control;
(xv) quality control and quality assurance;
(xvi) management reporting (advance payments, progress payments, cost performance, funding requirements, discounts, milestone and progress reports;

(xvii) management support (residencies, secondary administration, buyer control of commitments, buyer's role, subcontract management, subcontract modification, expediting, transportation, subcontractor system surveillance);

(xviii) contract completion (termination partial or complete, stopwork orders, default actions, excusable delays);

(xix) closeout actions;

(xx) postaward audits; and

(xxi) performance evaluation and reports (thorough review of all areas, including documentation for future business).

(c) The plan shall give appropriate consideration to the data furnished by the contractor when providing the required advance notification of intent to place certain subcontracts.

(d) Surveillance tests that require audit effort should be accomplished for the ACO by the contract auditor in conjunction with other audit duties.

(e) Certain subcontractors may require additional surveillance because of the emphasis in the flowdown of system acquisition policies in subcontracts, with particular concern for subcontractor cost, schedule, and technical performance. The contracting officer, the PSA, the review team, and/or subcontract management personnel may request assistance of the contract administration office having cognizance over the subcontractor to provide supplementary information as a means of verifying the information obtained from the contractor's records and, if needed, the request will call for a complete report on the subcontractor's purchasing system.

(f) Compatibility surveillance reviews shall be performed biennially at a CWAS-qualified contractor location to determine whether the purchasing techniques used for commercial and/or fixed-price competitive business are in compliance with statutory and contractual provisions. Major discrepancies should be brought to the attention of the contractor for corrective action. Failure to implement the ACO's recommendation applicable to major deficiencies should be considered as grounds for withdrawing approval of the contractor's purchasing system.

SUBCONTRACTING POLICIES AND PROCEDURES

Part 2--Requirement for Consent to Subcontracts

23-200 Scope of Part. This part sets forth the requirements for consent to subcontracts which includes but is not limited to purchase orders, changes and/or modifications thereto.

23-201 Subcontract Clauses.

23-201.1 *Clause Entitled "Subcontracts" for Fixed-Price Contracts.*

(a) The clause set forth in 7-104.23 shall be inserted in all fixed-price type contracts.

(b) The clause may be modified to:

- (i) lower the $100,000 threshold set forth in (ii) and (iii) of paragraph (b) of the clause when it is determined that closer surveillance of subcontracting is desirable because of such factors as the nature of the industry involved, the criticality of work which will probably be subcontracted, the absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's procurement system, or the novelty of the supplies or services being procured;
- (ii) delete the requirement for advance notification of, or consent to, any subcontracts which were evaluated during negotiations except in contracts for major system acquisition (as defined in 1-201.41) or subsystems or components thereof;
- (iii) require extraordinary Government surveillance in exceptional cases of subcontracts or classes of subcontracts selected during negotiation. In this event, insert as paragraph (h) of the clause in 7-104.23(a), the additional paragraph in 7-104.23(b).

23-201.2 *Clause Entitled "Subcontracts" for Cost-Reimbursement and Letter Contracts.*

(a) The appropriate clause entitled "*Subcontracts*" from either 7-203.8 or 7-402.8 shall be included in all cost-reimbursement and letter contracts.

(b) (1) Under cost-reimbursement and letter contracts, other than facilities contracts, consent is required for:

- (i) subcontracts for fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities; and
- (ii) subcontracts for research and development (where the clause in 7-402.8 is used).

(2) Consent is also required for the following additional subcontracts under cost-reimbursement and letter contracts, unless the contractor's procurement system has been approved except in contracts for major systems acquisition (as defined in 1-201.41) or subsystem or components thereof, notwithstanding procurement system approval, consent will be required:

- (i) cost-reimbursement, time and materials or labor-hour subcontracts; and
- (ii) fixed-price subcontracts exceeding either $25,000 or 5% of the total estimated prime contract price.

(3) See 7-702.33 or 7-703.25 for requirements for approval of subcontracts under facilities contracts.

(c) Purchases by a contractor from General Services Administration supply sources, under a written authorization by the contracting officer (see 5-906), shall be treated as having been made with the consent of the contracting officer as required by the clause set forth in 7-204.28 or 7-403.23.

(d) In exceptional circumstances, certain subcontracts or classes of subcontracts may be selected during negotiation for extraordinary Government surveillance. In such circumstances, insert as subparagraph (k) of the clause in 7-203.8(a), the additional paragraph in 7-203.8(b), or as subparagraph (k) of the clause in 7-402.8(a), the provision set forth under 7-402.8(b).

23-201.3 *Subcontracts Clause for Time and Materials and Labor-Hour Contracts*. See 7-901.10 for requirements for approval of subcontracts under time and materials and labor-hour contracts.

23-201.4 *Clause Entitled "Equal Opportunity Pre-award Clearance of Subcontracts"*. The clause in 7-104.22 shall be inserted in all contracts containing any of the "Subcontracts" clauses prescribed by this paragraph 23-201.

23-202 Consent to Subcontracts.

(a) Early surveillance and involvement in the prime contractor's procurement planning process including the development of the technical requirements for the subcontracts, particularly under major system acquisition (as defined in 1-201.41), is essential for more knowledgeable evaluation of proposed subcontracts submitted for consent. The contracting officer shall seek such assistance and advice necessary to fulfill this requirement. He shall consider the following in his review:

(i) the technical justification for selection of the particular supplies, equipment, or services;

(ii) whether the decision to enter into the proposed subcontract is consistent with the contractor's approved "make-or-buy" program, if any (see 3-902);

(iii) whether the proposed subcontract will require the use of Government-furnished facilities and, if so, whether proper consideration has been obtained;

(iv) the responsibility of the proposed subcontractor (see 1-906);

(v) the basis for selecting the proposed contractor, including the price competition obtained;

(vi) any cost or price analysis or price comparisons accomplished, with particular attention to whether cost or pricing data are accurate, complete, and current, and to whether any required certification has been obtained (see 3-807.3 and 7-104.42);

(vii) the effectiveness of subcontract management by the prime contractor;

(viii) the appropriateness of the type of subcontract used (see Section III, Part 4) to include whether and to what extent considerations have been given to provisions for economic price adjustment;

(ix) the estimated total extent of subcontracting, including procurement of parts and materials;

(x) the extent to which the prime contractor obtains assurance of the adequacy of the subcontractors' procurement system;

(xi) availability from Government sources of industrial facilities or special test equipment (see Section XIII, Part 3);

(xii) whether consideration was given to the solicitation of small business and labor surplus area subcontract sources;

(xiii) the extent of compliance with Cost Accounting Standards in the awarding of subcontracts;

(xiv) whether the prime contractor has adequately and reasonably translated the Government's technical requirements in the prime contract;

(xv) whether the acquisition approach is in keeping with the risks involved and current policy; and

(xvi) prime contractor's assessment and dispostion of subcontractors alternate proposals, if offered.

(b) In reviewing subcontracts, careful and thorough evaluation is particularly necessary when:

(i) the prime contractor's procurement system or performance thereunder is considered inadequate;

(ii) subcontracts are for items for which there is no competition or for which the proposed prices appear unreasonable (see 3-807.9(d));

(iii) close working arrangements or business or ownership affiliations exist between the prime and the subcontractor which may preclude the free use of competition or result in higher subcontract prices than might otherwise be obtained;

(iv) subcontracts are applicable to Major System Acquisition (as defined in 1-201.41) and the flow-down procedures of Department of Defense Directive 5000.1;

(v) a subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government, all other factors such as manufacturing period and quantity being comparable; or

(vi) a subcontract is to be placed on a cost-reimbursement, time and materials, labor-hour, fixed-price incentive, or fixed-price redeterminable basis.

When subcontracts have been placed on a cost-reimbursement, time and materials, or labor-hour basis, contracting officers should be hesitant to consent to the repetitive or unduly protracted use of such type of subcontracts and should follow the principles of 3-803(b).

(c) Consent to a subcontract or relief from the requirement for obtaining consent, by virtue of the approval of the contractor's procurement system, does not constitute a determination as to the acceptability of the subcontract price or the allowability of costs. However, it should minimize the requirement for retroactive review of subcontracts, except cost-reimbursement subcontracts, for the purpose of determining reasonableness of costs, unless there is some indication that the costs may be unreasonable. In all cases, costs resulting from such subcontracts shall be subject to the test of allocability.

(d) In consenting to cost reimbursement subcontracts, the contracting officer must insure that fees under such subcontracts never exceed the fees identified in 3-405.6(c)(2).

23-203 Disputes and Arbitration Provisions in Subcontracts.

(a) Consent by the contracting officer to a subcontract does not constitute approval of the terms and conditions of the subcontract. Nevertheless, the contracting officer shall not consent to a provision in the subcontract purporting to give the subcontractor the right to obtain a direct decision of the contracting officer or the right of direct appeal to the Armed Services Board of Contract Appeals. The Government is entitled to the management services of the prime contractor in adjusting disputes between himself and his subcontractors. The contracting officer should act only in disputes arising under the prime contract, and then only with and through the prime contractor, even if a subcontractor is affected by the dispute between the Government and the prime contractor. The contracting officer shall not participate in disputes between a prime contractor and his subcontractors.

(b) However, the contracting officer should not refuse consent to a subcontract, particularly under a cost-reimbursement contract, merely because it contains a clause giving the subcontractor, if he is affected by a dispute arising under the prime contract, an indirect appeal to the Armed Services Board of Contract Appeals through assertion of the prime contractor's right to take such an appeal, or through prosecution of such an appeal by the prime contractor on behalf of the subcontractor. Such a clause must not attempt to obligate the contracting officer or the Board to decide questions which do not arise between the Government and the prime contractor or which are not cognizable under the "Disputes" clause of the prime contract, and must not attempt to obligate the contracting officer to notify or deal directly with the subcontractor. However, such a clause may appropriately provide that the prime contractor and subcontractor shall be equally bound by the contracting officer's or the Board's decision on a dispute.

(c) The prime contractor and his subcontractor may agree to settle disputes by arbitration. The results of such arbitration and the cost resulting therefrom, however, are no more binding on the Government than are the results of a judicial determination or a voluntary settlement; they are subject to independent review and approval under the prime contract. The contracting officer shall not consent to provisions in subcontracts purporting to make the results of arbitration (or judicial determinations or voluntary settlements) binding on the Government.

23-204 Additional Contract Clauses. Additional contract clauses with respect to subcontracting with small business, labor surplus area concerns, and minority business enterprises are set forth in Section VII and referenced in 1-332 and Section I, Parts 7 and 8.

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SECTION XXIV

PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

24-000 Scope and Applicability of Section. This Section establishes uniform policies and procedures relating to the reporting, redistribution, and disposal of property which forms the basis of a claim against the Government, and other excess property when title is vested in the Government (see 24-101.5). This Section is not applicable to the disposal of real property or to property where the Government has a lien or title solely as a result of advance or progress payments when such payments have been liquidated.

24-001 Policy. It is the policy of the Department of Defense, notwithstanding the absence of any contractual provision relating to a plant clearance period, to effect plant clearance of property to which this Section applies as quickly as possible, consistent with efficient operation. Disposition shall be effected with the view of achieving maximum economic reutilization of excess property or of obtaining the greatest possible return on the sale of surplus property.

PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

Part 1—General

24-101 Definitions. As used in this Section, the following terms have the meaning stated below.

24-101.1 *Automatic Release Date* (*ARD*) means the date on which screening for Federal utilization is completed and the property is determined not to be needed for any Federal use. The date signifies the transition from excess to surplus, but does not include the donation screening period.

24-101.2 *Common item* means material which is common in nature to the applicable Government contract and the contractor's other work.

24-101.3 *Contract auditor* means the Defense Contract Audit Agency (DCAA) auditor assigned the responsibility for performing financial reviews and analyses requiring access to the contractor's records supporting cost data.

24-101.4 *Contractor-acquired property* means property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

24-101.5 *Contractor inventory* means:

(i) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and

(ii) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

24-101.6 *Demilitarization* means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

24-101.7 *Departmental excess property* means contractor inventory which has been determined to be excess to the procuring Department (and requiring Department, if that Department is not the procuring Department).

24-101.8 *Disbursing officer* means the officer or agent of the office designated as the paying office under the contract.

24-101.9 *Government-furnished property* is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor.

24-101.10 *Industrial plant equipment* means that part of plant equipment with an acquisition cost of $5,000 or more (see 13-312).

24-101.11 *Inventory control point* means an organizational unit within the supply system of a Department which is assigned the primary responsibility for the management of a group of items, either within a particular Department or for the Department of Defense.

24–101.12 *Line item* means a single line entry on a reporting form from any one contract at any one location which indicates a quantity of property having the same description and condition code.

24–101.13 *Material.* (See 13–101.4.)

24–101.14 *Controlled substances* means any of the following:

(i) Narcotic (opium), depressant, stimulant (demerol), or hallucinogenic drug (marijuana) or substance;

(ii) any other drug or substance found by the Attorney General to require control as provided by Title II of the Comprehensive Drug Abuse Prevention And Control Act of 1970; or

(iii) any other drug or substance required to be controlled by the U.S. by international treaty, convention or protocol.

24–101.15 *Personal property* means property of any kind or any interest therein, except real property as defined in B–102.8 and vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

24–101.16 *Plant clearance* means all actions related to the screening, redistribution, and disposal of contractor inventory from a contractor's plant or work site. (Contractor's plant includes a Government facility when contractor-operated).

24–101.17 *Plant clearance officer* means the Government representative assigned the responsibility for plant clearance. He is an authorized representative of the contracting officer.

24–101.18 *Plant clearance period* means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the termination contracting officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the termination contracting officer and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

24–101.19 *Plant equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

24–101.20 *Production scrap* means material generated as a scrap in the normal production processes having only a remelting or reprocessing value, including textile clippings, metal clippings, chippings, borings, turnings, and similar types of scrap, including faulty castings and forgings.

24–101.21 *Public body* means any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

24–101.22 *Radioactive material* means any item or material which is in itself radioactive or which is contaminated with radioactive material giving readings in excess of background radiation as measured on an instrument designed specifically for the type of radiation being emitted.

24-101.23 *Reportable property* means contractor inventory which must be reported or screening in accordance with this Section prior to disposal as surplus.

24-101.24 *Reporting activity* means the Government activity which initiates Standard Form 120, Report of Excess Personal Property, or transmits DD Form 1342s, DoD Property Record Supplementary Data, to the Defense Industrial Plant Equipment Center (DIPEC).

24-101.25 *Salvage* means property which because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

24-101.26 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

24-101.27 *Screening Completion Date (SCD)* means that date on which all screening required by this Section is to be completed, including screening within the Government and donation screening.

24-101.28 *Service educational activity* means any educational activity designated by the Assistant Secretary of Defense (Manpower) as being of special interest to the Armed Services, such as Maritime Academies or Military, Naval, Air Force, Coast Guard preparatory schools.

24-101.29 *Serviceable or usable property* means property that has reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

24-101.30 *Special tooling*. (See 13-101.5).

24-101.31 *Special test equipment*. (See 13-101.6).

24-101.32 *Surplus property* means contractor inventory not required within the Department of Defense or by other Federal agencies.

24-101.33 *Termination inventory* means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, special test equipment, material, or special tooling which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in 24-101.4 and 24-101.9.

24-102 Duties and Responsibilities of Plant Clearance Officer. The plant clearance officer shall be responsible for:

(i) providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;
(ii) accepting or rejecting inventory schedules and DD Form 1342;
(iii) conducting or arranging for inventory verification and preparation of DD Form 1642, Inventory Verification Survey;
(iv) initiating prescribed screening and effecting resulting transfer and donation actions;
(v) final plant clearance of contractor inventory;
(vi) pre-inventory scrap determinations, as appropriate;

(vii) evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(viii) determining method of disposal;

(ix) surveillance of contractor-conducted sales;

(x) accounting for all contractor inventory reported by the contractor;

(xi) advising and assisting, as appropriate, the contractor, inventory control manager, other federal agencies, or higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(xii) approving method of sale, evaluating bids, and approving sale prices for contractor-conducted sales.

(xiii) recommending the reasonableness of selling expenses on contractor-conducted sales;

(xiv) securing anti-trust clearance, as required;

(xv) advising the contracting officer on all property disposal matters; and

(xvi) employing, when appropriate, such services as may be available from the General Services Administration, the Defense Surplus Sales Offices, or the Defense Logistic Services Center.

Part 2—Methods of Disposal

24-201 Disposal—General.

(a) Contractor inventory possessing military offensive or defensive characteristics, not required within the Department of Defense, shall be demilitarized by the contractor in accordance with Defense Demilitarization Manual, DoD 4160.21-M-1. In unusual cases the purchaser may be authorized by the contracting officer to perform the demilitarization in accordance with DoD 4160.21-M-1; *provided*, however, that in no case shall such authorization be granted to the purchaser if the inventory is dangerous to life or property.

(b) Contractor inventory classified by reason of military security, unless the classification is removed by proper authority, shall be disposed of in accordance with applicable security regulations or as otherwise directed by the contracting officer.

(c) Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

24-201.1 *Priorities.* Subject to the Government exercising its rights to require delivery of any items of contractor inventory to satisfy known Government requirements, contractor inventory shall be disposed of by the following methods in the priority indicated:

- (i) purchase or retention, by prime contractor or subcontractor, of contractor-acquired property at cost;
- (ii) return of contractor-acquired property to suppliers;
- (iii) utilization within the Government (through application of prescribed screening procedures);
- (iv) donation to eligible donees;
- (v) sale (including purchase or retention at less than cost by the prime contractor or subcontractor);
- (vi) donation to public bodies in lieu of abandonment; or
- (vii) abandonment or destruction.

24-201.2 *General Restrictions on Contractor's Authority.* The following general restrictions are in addition to specific restrictions set forth in this Part 2:

- (i) the authority of a contractor to purchase, retain, or dispose of contractor inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to:
  - (A) any applicable Government restrictions on the disposition of property which is either classified by reason of military security or is dangerous to public health, safety or welfare, and
  - (B) any contract provisions regarding the disposition;
- (ii) a contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by him to be: (1) a civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; (2) a member of the Armed Forces of the United States including the United States Coast Guard whose

duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; or (3) an agent, employee or immediate member of the household of personnel in (1) and (2) above.

(iii) the authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve:

(A) a sale by a subcontractor to the next higher-tier contractor or to an affiliate (see 2–201(a)B(ii) and (b)(xvii)) of such contractor or of the subcontractor; or

(B) a sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

24–202 Contractor-Acquired Property—Purchase or Retention at Cost, or Return to Suppliers.

24–202.1 *Purchase or Retention at Cost.*

(a) Contractors shall be encouraged to purchase or retain contractor-acquired property at cost. No part of the cost of property so purchased or retained shall be included as a claim for reimbursement against the Government. Under cost-reimbursement type contracts, appropriate adjustments shall be made for previously reimbursed costs. When a contractor purchases or retains any allocable contractor-acquired property for use in other continuing Government contracts or commercial operations, handling and transportation charges necessitated by the purchase or retention of such property may be considered as allowable cost (included in contractor's settlement proposal as other costs in case of termination); *provided*, that such costs are reasonable

(b) When property purchased or retained is for use on a continuing Government contract and is not in excess of the quantitative requirements for completion of that contract, that property shall be considered properly allocable to the continuing contract if that contract is subsequently terminated, even though its procurement would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other Government contracts, the contractor terminates subcontracts under the other Government contracts, the charges incurred by reason of the termination of such subcontracts may be included as an allocable cost under the contract which generated excess property. When diversion of material in this manner is planned, a careful cost evaluation shall be made to assure that these costs are reasonable in comparison to the cost of property to be diverted.

24–202.2 *Return of Property to Suppliers.* Contractors are authorized and shall be encouraged to return allocable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge or 25 percent of cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges with respect to the property so returned, but shall not be reimbursed for the cost of the property returned to suppliers in accordance with this paragraph. Under cost-reimbursement type contracts, appropriate adjustments shall be made for previously reimbursed costs.

24-202.3 *Cost-Reimbursement Type Contracts.* Under cost-reimbursement type contracts, property purchased or retained by the contractor or returned to suppliers, in accordance with 24-202.1 and 24-202.2 above, shall not be reported on inventory schedules. Individual transaction approvals shall not be required, but such transactions shall be subject to review on a periodic basis by the administering activity in coordination with the contract auditor to assure that the Government's interest is fully protected.

24-203 Inventory Schedules.

24-203.1 *Submission of Inventory Schedules.*

(a) Contractor inventory (see 24-101.5) shall be reported by the contractor to the contract administration office on inventory schedules promptly after it is determined to be excess or at such later time as may be contractually authorized. Inventory schedules of subcontractors shall be processed in accordance with 24-212. Contractor-acquired property purchased or retained pursuant to 24-202 shall not be listed. Partial schedules may be submitted when they cover substantial portions of a particular property classification of excess inventory. Each schedule submitted shall be identified by the contractor as "partial" or "final." Submission shall not be delayed in order to supply complete cost data on items of work in process where data is not readily available.

(b) The contractor may submit machine listings of inventory, provided, that all essential elements of data for preparing inventory schedules as prescribed in this Section and as outlined in DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory, are included thereon, and an appropriate signed DD inventory schedule form is submitted as a cover sheet.

(c) With respect to termination inventory reported in accordance with 24-203.2, Government-furnished property and contractor-acquired property shall be grouped separately on the schedule, clearly identified as either Government-furnished or contractor-acquired, and subtotals provided for each group.

(d) Thirty copies of each inventory schedule listing serviceable and usable property requiring screening in accordance with this Section, and five copies of each inventory schedule for property not requiring screening (see 24-205.1(d)) shall be submitted to the plant clearance officer, unless a different quantity is prescribed by the plant clearance officer.

(e) Industrial Plant Equipment (IPE) (see 13-312) shall be reported on DD Form 1342, DoD Property Record, and processed in accordance with 24-205.3.

24-203.2 *Separate Schedules.*

(a) Separate sets of schedules shall be submitted on the forms illustrated in F-200.542 through F-200.545c and F-200.832 for serviceable or usable contractor inventory as follows:

- (i) property having a line item acquisition cost of more than $300; and
- (ii) property having a line item acquisition cost of $300 or less.

(b) Contractor inventory having a line item acquisition cost of more than $300 shall be grouped separately as follows:

- (i) aeronautical material and equipment;
- (ii) electronic material and equipment;

(iii) special test equipment; or

(iv) other serviceable or usable property, excluding special tooling.

(c) Separate sets of schedules shall also be submitted for contractor inventory without regard to acquisition cost as follows:

(i) serviceable or usable special tooling;

(ii) scrap;

(iii) salvage; or

(iv) property bearing a military security classification, regardless of condition or value.

(d) Grouping of property by the contractor shall be subject to the approval of the plant clearance officer.

24-203.3 *Inventory Descriptions*. Inventory schedules submitted in accordance with 24-203.1 and 24-203.2, shall be prepared in accordance with instructions prescribed in this Section and as outlined by DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory. The contractor shall consult the plant clearance officer when in doubt as to the extent of description required. Inventory judged to be salvage shall be described in sufficient detail to reflect salvage potential.

24-203.4 *Inventory Schedule Certificate*. When termination inventory is reported on inventory schedules, the prime contractor, or the subcontractor having title to the property, shall execute the Inventory Schedule Certificate. When contractor inventory, other than termination inventory, is reported on inventory schedules, the prime contractor shall execute the Inventory Schedule Certificate, irrespective of the location of the property. The original and three copies or reproducible masters of each inventory schedule shall be signed by an authorized official of the contractor.

24-203.5 *Common Items*. Except for property, delivery of which has been required by the Government, and except for Government-furnished property, under no circumstances shall the contractor's inventory schedules include any items reasonably usable on other work of the contractor without loss to the contractor (see 15-205.42).

24-203.6 *Withdrawals from Inventory Schedules*. If at any time prior to final disposition any items of contractor-acquired property listed in the contractor's inventory schedules becomes reasonably usable on other work of the contractor without loss to him and this fact is known to the contractor, he must purchase or retain such items at cost in accordance with 24-202, and shall amend his inventory schedules and his claim accordingly. Upon notification to the plant clearance officer, the contractor may similarly purchase or retain at cost any other items of property included in his inventory schedules. Withdrawal of any Government-furnished property included in inventory schedules is subject to written approval by the plant clearance officer. If withdrawal occurs after screening has started, the plant clearance officer shall immediately notify the appropriate screening activity.

24-203.7 *Acceptance of Inventory Schedules*.

(a) Upon receipt of inventory schedules from the contractor, the plant clearance officer shall review the schedules and determine their acceptability. If the schedules are acceptable, the plant clearance officer shall within 15 days execute and transmit to the contractor a DD Form 1637, Notice of Acceptance of Inventory. If any inventory schedule or DD Form 1342 is found to be inadequate, the plant clearance officer shall notify the contractor in writing of the deficiencies within 15 days of the receipt of such schedules. The contractor shall be required to correct or supplement the schedules or DD Form 1342 as to the items which are deficient. Inventory schedules shall not be rejected if the information contained therein is adequate for disposal purposes, even if complete cost data on work in process are not available. Rejection of an inventory schedule shall be limited when possible to specific items thereon and shall not necessarily render the entire schedule unacceptable. Should substantial errors develop which were not apparent from termination inventory schedules previously deemed acceptable, the final phase of a plant clearance period shall not commence until corrected schedules have been submitted, unless the plant clearance officer determines that no unwarranted delay in disposal operations was occasioned thereby.

(b) *Verification of Inventory*. When property is reported excess by a contractor it is necessary that the interests of the Government be protected by assuring that property is physically, quantitatively, and technically allocable to the contract in question and cannot reasonably be diverted to other work of the contractor. The plant clearance officer, who is responsible for disposal of contractor inventory, is also responsible for the adequacy of allocability reviews. In carrying out this responsibility, the plant clearance officer shall establish close coordination with and request the assistance of the contract auditor, quality assurance representative, production specialist, price analyst, property administrator, or other qualified personnel, as appropriate, when such assistance is necessary. It will be the plant clearance officer's responsibility to assure that adequate verification is accomplished to determine that:

(i) inventory is present at the location indicated;
(ii) it is allocable to the modified or terminated contract or the terminated portion thereof;
(iii) quantity and condition are correctly stated; and
(iv) the contractor has endeavored, where practicable, to divert to other work or to return contractor-acquired property to supplier for appropriate credit.

Verification may be performed by resident Government personnel prior to the formal submission of inventory schedules to the plant clearance officer. Screening prescribed in 24–205 shall not be withheld after receipt of acceptable inventory schedules pending completion of inventory verification. The results of the verification shall be recorded on DD Form 1642, Inventory Verification Survey, in accordance with instructions for performing inventory verification set forth in 24–302.1. A copy of the completed survey form shall be furnished the appropriate contracting officer. Upon completion of inventory verification, the plant clearance officer shall take immediate action to correct any discrepancies noted, including coordination with the contractor, contracting officer, or property administrator, and screening activities, as appropriate. When a controversy arises with respect to allocability, the contractor shall be required to substantiate his position with appropriate documentation which the plant clearance officer shall evaluate and forward to the contracting officer with his recommendations for decision.

BEST DOCUMENT AVAILABLE

24-204 Scrap.

24-204.1 *General*. Scrap need not be itemized on inventory schedules if (i) the material is physically segregated in the contractor's plant, and (ii) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the plant clearance officer to determine whether the property is scrap. Promptly after the submission of inventory schedules, by the contractor, the plant clearance officer shall review, or cause to be reviewed the contractor's treatment of any items of contractor inventory as scrap. The review shall include a careful examination of the inventory schedules and, in appropriate cases, physical inspection of the property involved. Prior to authorizing disposal of items as scrap, the plant clearance officer shall obtain such approval as may be required.

24-204.2 *Pre-Inventory Scrap Determinations*. The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

24-204.3 *Segregation*. Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from his other work and, in such cases, the scrap warranty required by 24-204.5 may be waived at the discretion of the plant clearance officer.

24-204.4 *Contractor's Approved Scrap Procedure*.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this Section. Production scrap, as defined in 24-101.20, and production spoilage, may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken, mutilated, or otherwise rejected parts excess to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government- owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of this Section.

(e)(1) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Precious Metals Recovery Office (DPDM-R), NWS Earle, Colts Neck, New Jersey, 07722, for disposition instructions.

(2) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall *not* be used.) Grindings or sweepings shall not be packaged in paper or wooden containers as loss occurs due to adhesion of particles. Containers shall be marked to show the type of precious metals contained therein.

(3) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment shall be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

(4) When the determination is made that precious metal recovery is not feasible, the material in (e)(1) above shall be disposed of through normal procedures. The sales return shall not be less than the scrap value of the precious metal(s) contained therein.

24-204.5 *Scrap Warranty.*

(a) If contractor inventory is sold as scrap, including sale to the holding contractor, a scrap warranty in the form outlined in DD Form 1639, Scrap Warranty, shall be included as a special condition of sale, unless the requirement is waived pursuant to (d) below.

(b) The scrap warranty may be released on behalf of the Government by the administrative contracting officer (TCO for termination inventory), if, as consideration for the release, the Government is paid the difference between (i) the price for which the material was sold as scrap, and (ii) an amount not less than that which the material could reasonably be expected to bring if it were sold at a fair and reasonable price for purposes other than use as scrap. The release of the scrap warranty shall be given by the Government and the consideration paid to the Government, even though the contract containing the warranty was not made directly with the Government.

(c) In the event of resale of any material subject to a scrap warranty, the seller is required to obtain an appropriate scrap warranty from the purchaser. Upon tender of this warranty to the Government, the seller shall be released by the Government from liability under his own warranty.

(d) The scrap warranty requirement may be waived by the plant clearance officer in circumstances described in 24-204.3 and whenever it can be clearly established that such a waiver would not adversely affect the Government's interest. A written justification supporting the waiver shall be prepared and placed in the case file.

24-205 Screening of Contractor Inventory.

24-205.1 *General.*

(a) To promote maximum utilization within the Government, serviceable or usable property included in the contractor's inventory schedules shall be screened prior to disposition by donation or sale. The plant clearance officer shall arrange, in such a manner as to avoid interruption of the contractor's operations, for physical inspection of such property at the contractor's plant if requested by prospective transferees. All transfers of property within the Department of Defense or other agencies of the Government shall be without reimbursement. Except for termination inventory, costs incident to transfers, including packing, crating, preparation for shipment, loading and transportation, which are not the responsibility of the contractor, shall be borne by the transferee. (Costs incident to the movement of industrial plant equipment under the direction and control of the Defense Industrial Plant Equipment Center (DIPEC) shall be borne by the Defense Supply Agency.)

(b) Except as set forth in (c) and (d) below, screening, including a 15-day donation screening, shall be in accordance with 24-205.2 and 24-205.3, and shall be completed within a 90-day period, beginning with the date the plant clearance officer receives acceptable inventory schedules from the contractor. This 90-day period is broken down into two segments. During the first through the 75th day, screening required by 24-205.2(a) and (b) and 24-205.3(a), (b) and (c) is accomplished. The 75th day shall be designated as the automatic release date (ARD) by the plant clearance officer. Screening for the 76th through the 90th day required by 24-205.2(c) and 24-205.3(d) completes the 90-day screening cycle. The full 90-day period shall be designated as the Screening Completion Date (SCD). Plant clearance officers will designate two dates on all screening documents. The 75th day as the ARD and the 90th-day as the SCD, neither of which shall be extended.

(c) Except for Government-furnished property, subcontractor termination inventory to which 8-209.4 applies, is not subject to this paragraph 24-205.

(d) Unless otherwise indicated, the following categories of contractor inventory are exempt from the screening requirements of 24-205.2:

(i) unless the contracting officer determines in individual cases that screening of such property is desirable, serviceable or usable property with a line item acquisition cost of $300 or less shall not be screened in accordance with 24-205.2, *provided* such property is reported on separate schedules, except that property of a type listed in (f) below shall be screened by the procuring and/or requiring Department in accordance with 24-205.2(a); property should not be listed as separate line items (as defined in 24-101.12) solely for the purpose of avoiding mandatory screening requirements. Further, when a contractor reports substantially similar items on an inventory schedule, but lists them as separate line items due to different property control identification or assembly numbers, serial numbers, minor variations in condition code or unit cost, or other insignificant or minor reasons, these items will be grouped on the schedule: If the cost of this group of items is more than $300, they will be screened in accordance with 24-205.2. The screening activity shall be informed as to reasons for screening items having an "apparent" line item value exempting them from screening;

(ii) scrap and salvage and property in condition codes N4, E4, O4, R3, and R4 which will not ordinarily be considered as serviceable or usable property;

(iii) serviceable or usable subcontractor termination inventory to which 8-209.4 applies, with the exception of DIPEC-controlled industrial plant equipment, to which 24-205.3 applies;

(iv) work in process listed in DD Form 544 unless, due to the nature of the item or extent of build-up accomplished, the plant clearance officer determines that screening is desirable or necessary; and

(v) when the aggregate of all schedules to be reported by the contractor has an acquisition cost of $2,500, or less and represents the total inventory to be reported under a specific claim or contract, unless determined necessary by the contracting officer.

(e) Listings of property exempt from formal screening in accordance with paragraph (d) above, with the exception of (d) (iii) shall be maintained in a property screening file for a period of 30 days and made available for the first 15 days for selection by General Services Administration representatives for Federal utilization purposes, and for the second 15 days, for selection for donation purposes in accordance with 24-207. Items selected either for Federal utilization or donation may be disposed of in accordance with 24-206 if shipping instructions are not received within 40 days after date of selection in the case of Federal utilization, or from the start of the donation screening period in the case of donation.

(f) The following categories of contractor inventory are subject to the screening requirements of 24-205.2(a):

(i) serviceable or usable special tooling;

(ii) serviceable or usable special test equipment (see 24-205.4(b) for additional screening procedures);

(iii) items which the contract directs to be screened will be screened as provided by the terms of the contract, irrespective of line item dollar value or condition code;

(iv) items on which the plant clearance officer determines that screening is desirable. In this event, the screening activity will be provided complete and specific reasons for screening items normally exempt from screening; and

(v) perishables, property bearing a military security classification, and property dangerous to public health or safety.

(g) Upon completion of screening in accordance with 24-205.2(a), property cited in (f) above, with the exception of (f) (v), will be subject to the provisions of (e) above.

(h) Automatic data processing equipment, including that on lease in which the Government is entitled to rental benefits, shall be screened in accordance with 24-205.8.

(i) Contractor inventory located in foreign countries does not require screening with General Services Administration (GSA) in accordance with 24-205.2 and 24-205.3.

24-205.2 *Procedure.*

(a) *First Through 30th Day.* Promptly upon receipt of acceptable inventory schedules from the contractor, serviceable or usable property shall be screened within the procuring Department (see 5-1101.4) and the requiring Department (see 5-1101.3) if such Department is not the procuring Department. The requiring Department shall have first priority for retention of listed items. Such screening shall be completed within 30 days or less. The schedules shall be transmitted with Standard Form 120, Report of Excess Personal Property, reflecting the ARD and SCD and appropriately identified as contractor inventory.

(b) *31st Through the 75th Day.* Four copies of the inventory schedules reflecting deletions of all retained items shall be mailed or otherwise delivered by the plant clearance officer to the General Services Administration regional office serving the region in which the property is located, not later than the 31st day from and including the day the acceptable schedules were received by the plant clearance officer. The schedules shall be transmitted with Standard Form 120, Report of Excess Personal Property, reflecting the ARD and SCD and appropriately identified as contractor inventory. At the time of transmittal to the General Services Administration, information copies of the revised inventory schedules shall be forwarded to the other Departments whenever aeronautical or electronic material and equipment is involved. When requests for transfers are received from the procuring or requiring Department after the 31st day and prior to receipt of General Services Administration transfer order, the plant clearance officer shall immediately notify the General Services Administration Regional Office that the items have been withdrawn and are no longer available for General Services Administration screening. Notification shall include identification of the applicable Standard Form 120, the contractor's name, location, and contract number. The General Services Administration will prepare and issue circulars and catalogs to all agencies of the Government within the region. Property selected as a result of reviewing the General Services Administration circulars or catalogs will be requested from the General Services Administration Regional Office that issued the circular or catalog. Department of Defense activities requesting listed property will have priority on a "first come-first served" basis for such property through the 60th day. Thereafter, the General Services Administration will honor requests for any agency of the Government for transfer of property on a "first come-first served" basis. The General Services Administration will transmit approved orders and shipping instructions for property to be transferred to the Department of Defense activities from which it received the inventory schedules. Such orders and instructions shall be promptly honored and delivery authorized.

(c) *76th Through 90th Day*. During this period the General Services Administration will provide for the screening of all remaining property by eligible donees for possible donation (see 24-207).

24-205.3 *Procedures for Industrial Plant Equipment.*

(a) *Reporting Idle Industrial Plant Equipment*. Industrial plant equipment, identified in 13-312 and having an acquisition cost of $5,000 or more, shall be listed on DD Form 1342, DoD Property Record (see B-306.1, C-306.1 and F-200.1342). The DD Form 1342 shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. If the industrial plant equipment has numerically controlled features, the contractor shall prepare and submit DD Form 1342, Section VI (page 2), Numerically Controlled Machine Data (see F-200.1342). Upon receipt of acceptable DD Form 1342, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 24 of the DD Form 1342 and shall not be extended, except as provided in (e) below. The plant clearance officer will forward two copies of the DD Form 1342 to the Defense Industrial Plant Equipment Center, Memphis, Tennessee 38114, for all industrial plant equipment in condition codes other than "X." Condition code "X" industrial plant equipment shall be processed in accordance with 24-205.1(e). The DD Form 1342 shall be forwarded to DIPEC within 15 working days after becoming idle. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—First Through 30th Day*. DIPEC shall screen excess industrial plant equipment against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a shipping instruction containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st Through 75th Day*. On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the Government on a "first come-first served" basis and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th Through 90th Day*. During this period the General Services Administration will provide for the screening of all remaining industrial plant equipment for possible donation. The General Services Administration will receive and approve donation applications for industrial plant equipment and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC .

(e) If a Department of Defense requirement develops after the 90th day and the item is still available the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than $5,000, and items of plant equipment with an acquisition cost of more than $5,000 not identified in 13–312, shall not be reported to DIPEC but shall be reported and screened in accordance with 24–205.

(g) The plant clearance officer shall, when IPE has been transferred, donated, sold, destroyed, abandoned, or other disposition taken, assure that the contractor prepares a DD Form 1342 for submission to DIPEC through the Property Administrator within 15 working days. In the case of a transfer of the IPE, assure that the Shipment Status Card or a copy of the completed shipping document is sent to DIPEC.

24–205.4 *Special Screening Procedures.*

(a) *General.* For the special categories of property identified below, standard screening requirements in 24–205 are superseded or modified by the procedure set forth for each category.

(b) *Standard Components of Special Test Equipment.*

(1) Contractors reporting special test equipment for disposal which contain standard, general or multipurpose components will adequately describe the composite unit to clearly reflect its capability and will further list and describe, in sufficient detail to permit screening all such standard components which can be economically removed and reused.

(2) In the event the contractor has a continuing requirement for the standard components to meet other approved special test equipment or facilities requirements, he shall annotate the DD Form 545 to indicate his requirement for such standard components. Screening shall be accomplished in accordance with 24–205.2(a) and the screening activity shall be requested to advise whether they have a requirement for the composite unit or any of the standard components which have not been annotated as being required by the contractor. If the composite unit is not required by the procuring or requiring department (see 24–205.2(a)), the contractor shall have first priority for those standard components which have been approved for transfer by the administrative contracting officer.

(3) Standard components, not categorized as industrial plant equipment, which have not been selected by the contractor or the procuring or requiring departments shall be screened in accordance with 24–205.2(b). If the standard components are categorized as industrial plant equipment and they can be economically removed and reused, and have not been annotated for retention by the contractor, DD Form 545 shall be submitted to DIPEC for screening as industrial plant equipment in accordance with 24–205.3(b), (c) and (d).

(4) Standard components shall not be removed from the composite unit until the requirements for the items have been established. If no requirements exist, the composite units shall be disposed of in accordance with 24-206 and 24-207.

(5) Those items categorized as industrial plant equipment approved for transfer by the administrative contracting officer to fill continuing facilities requirement, will be reported to DIPEC on DD Form 1342 under the procedures prescribed on the facilities reporting.

(c) *Nuclear Materials.*

(1) The possession, use, and transfer of certain nuclear materials are subject to the controls of the United States Nuclear Regulatory Commission (NRC) pursuant to the Atomic Energy Act of 1954, as amended. The materials are:

- (i) *by-product material*—meaning any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material (see NRC Regulation 10 CFR, Part 30);
- (ii) *source material* meaning—
  - (A) uranium, thorium, or any other material which is determined by NRC pursuant to the provisions of the Atomic Energy Act of 1954, as amended, to be source material, or
  - (B) ores containing one or more of the foregoing materials, in such concentration as the NRC may, by regulation, determine from time to time (see NRC Regulation 10 CFR, Part 40); and
- (iii) *special nuclear material* meaning—
  - (A) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or
  - (B) any material artificially enriched by any of the foregoing (see NRC Regulation 10 CFR, Part 70).

(2) Excess nuclear material in the categories described above shall be screened with the procuring activity. If there are no requirements, the ultimate method of disposal shall be dependent upon the license issued by the U.S. Nuclear Regulatory Commission or the respective States and pertinent Federal and Service Regulations. Assistance may be solicited on an as needed basis from the following activities having overall knowledge and responsibility for disposal of radioactive material within their respective services:

(i) Army: Commanding General
U. S. Army Materiel Command
ATTN: AMCSF
Washington, D. C. 20315

(ii) Navy: Primary support bureau, command or office.

(iii) Air Force: San Antonio Air Logistics Center
ATTN: SANUTE
Kelly Air Force Base, Texas 78241

(iv) Marine Corps: Commandant of the Marine Corps
Code: CSY
Headquarters, USMC
Washington, D. C. 20380

(v) Defense Supply Agency: Appropriate Defense Supply Center initiating the procurement contract.

(vi) National Aeronautics and Space Administration: Headquarters,
National Aeronautics and Space Administration,
CODE: BDU
Washington, D. C. 20546

(vii) Defense Nuclear Agency —
Director of Logistics, Code OALD
Washington, D. C. 20305

(d) *Strategic and Critical Materials*. Subject to the minimum quantity requirements set forth below, all strategic and critical materials listed, when determined to be excess as the result of screening in accordance with 24–205.2(a), shall be reported by the holding agency to the Property Management and Disposal Service (PMDS), General Services Administration, Washington, D.C. 20405, which will determine whether they shall be transferred to the General Services Administration for stockpiling:

(i) upon determination that the materials are excess, the holding agency shall notify the PMDS by letter showing the location and quantity and describing the material in sufficient detail as to chemical or other composition, specification, size, etc., to indicate the nature of each strategic material (Complete purchase specifications or material content analyses shall be included whenever available.); and

(ii) the General Services Administration shall review the notification letter from the holding agency and, if the General Services Administration decides that the material appears to conform to stockpile requirements and is needed for stockpile objectives, it shall furnish the holding agency with complete reporting instructions, pursuant to which the holding agency shall submit a report on Standard Form 125, Report of Strategic and Critical Materials

Materials	*Types, Grades, or Forms To Be Reported*	*Minimum Quantity at One Location To Be Reported*
Asbestos	Chrysotile fiber, spinning grade, low iron content.	2,000 pounds
Copper	Electrolytic cathodes Electrolytic wire bars Lake copper ingot bars Fire refined copper ingot bars. Oxygen-free, high conductivity.	2,000 pounds
Fluorspar	Metallurgical grade, ores or concentrates.	20 short tons
Jewel Bearings	As determined by GSA	any quantity
Mica	Muscovite Film, 1st and 2d qualities.	100 pounds
Palladium	Metal	any quantity
Platinum	Metals or alloys, as determined by GSA.	any quantity

Materials	*Types, Grades, or Forms To Be Reported*	*Minimum Quantity at One Location To Be Reported*
Quinidine	Powder	100 ounces
Quinine	Sulphate	100 ounces
Rutile	Ore	any quantity
Sapphire and Ruby	Boule	2,500 carats
Tantalum Metal	Capacitor Grade—powder or ingot.	any quantity
Titanium	Sponge	any quantity

Less than minimum quantities of strategic and critical materials shall be screened in accordance with the provisions of 24–205.2.

(e) *Printing Equipment* determined to be excess to a contract shall be reported for screening in accordance with 24–205.2. It shall be the responsibility of the procuring or requiring Military Department to report all printing equipment excess to its requirements to the Congressional Joint Committee on Printing within the screening period defined in 24–205.2(a). If no requirements exist, the reporting activity shall submit the listing of printing equipment to the General Services Administration for further utilization screening in accordance with 24–205.2(b).

(f) *Motor Vehicles*. When reporting vehicles assigned to Federal Supply Groups 23, 24, and 38 for screening pursuant to 24–205.2, the estimated one-time cost of repairs (parts and labor) will be inserted in block 18b and used to assign a condition code for insertion in block 18c of Standard Form 120.

(g) *Contractor Inventory of Civilian Agencies*. Contractor inventory (including industrial plant equipment) excess to Federal civilian agency contracts being administered by the Department of Defense shall be reported by the plant clearance officer to the owning civilian agency for the first 30 days for a determination of requirements. Inventory not required by the civilian agency shall then be reported to the applicable General Services Administration Regional Office in accordance with 24–205.2(b).

24–205.5 *Waiver of Screening Requirements*. An exception from screening requirements with respect to excess contractor inventory may be authorized by the Secretary of the procuring department or his designee *provided:*

(i) compelling circumstances clearly in the best interest of the Government justify an exception; and

(ii) the procuring department prepares a written notice, including determinations and findings, and furnishes copies thereof to the Administrator, General Services Administration, the Contract Administration Office, and, if plant equipment within the scope of DIPEC is involved, to the Commander, Defense Industrial Plant Equipment Center, Memphis, Tennessee, 38114. Such notice shall be distributed to these activities ten days in advance of the effective date of the exception.

24–205.6 *Local Screening*. Except for classified property or property which is dangerous to public health, contractor inventory which is exempt from formal screening requirements (see 24-205.1(d)), subject to departmental screening only (see 24-205.1(f)), or contractor inventory which is residual to other required screening, may be subjected to local screening for a period of 15 days prior to the donation screening period provided in 24-207(d) and prior to disposition by sale or abandonment. If duplicate requirements are received, Government activities will have precedence. The feasibility or extent of local area screening shall be determined by the plant clearance officer, based on considerations of quantity, condition and value of the property, and the estimated cost of effecting transfer.

24-205.7 *Packing, Crating, and Handling Services.* The contract administration office shall be responsible for obtaining packing, crating, and handling services. To accelerate plant clearance, appropriate data must be furnished by the transferee and shall be cited in the transfer or shipping document. The document shall not be forwarded to the contract administration office unless the required packing, crating, and handling funding data are furnished, except that funds for movement of IPE under the direction and control of DIPEC will be furnished directly by that Center (see 24-205.1(a)). Funding data for termination inventory shall not be cited since costs for such inventory are included in the contractor's settlement proposal.

24-205.8 *Procedures for Automatic Data Processing Equipment (ADPE).*

(a) Those items of ADPE as defined in 1-201.29 (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, on Standard Form 120, "Report of Excess Personal Property" (original and four copies). Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 90 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property will no longer be needed on the contracts, or a major portion thereof. To preclude unnecessary lease costs, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be purchased based on accumulated rental credits through the anticipated release date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(i) a complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(ii) a separate attachment, showing the time in service for each component, average utilization (hours per month) and average downtime per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(iii) a list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(iv) in the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The Defense ADP Resource Office (DARO) shall control ADPE reported excess. Shipments shall be made upon receipt of requests approved by DARO.

24-206 Sale of Surplus Contractor Inventory.

24-206.1 *General.*

(a) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this Section. The contractor is required to use his best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(b) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under 24-205, or retained at cost pursuant to 24-202, shall be sold in accordance with 24-206.2 at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance officer.

(c) *Description of Property.* Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(d) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, *i.e.*, "well preserved," "some surface rust," "repairs required," etc. Condition codes shall not be used. Because of its non-specific meaning to the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(e) *Lotting* shall be in accordance with the following:

- (i) unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;
- (ii) commercially similar items shall be lotted together when practicable;
- (iii) used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;
- (iv) within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;
- (v) no lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;
- (vi) an alternate bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item .... (Alternate Bid)

This item consists of all property listed and described in Items .... to ...., inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items .... to ...., inclusive.

(f) *Basis of Sale* shall be:

- (i) *Unit Price Basis*. Items offered for sale shall require the bid price to be stated in terms of the quantity or weight generally applied by industry in the commercial sale of such items.
- (ii) *Lot Price Basis*. When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot price basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(g) *Format of Invitation*. In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(h) *Bidder's Lists*. The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required, from the Defense Surplus Bidder's Control Office (DSBCO), 50 North Washington Street, Battle Creek, Michigan 49016. Use of listings maintained by DSBCO is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(i) *Auction, Spot Bid, and Retail Sales*. Auction, spot bid, and retail sales shall not be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(j) *Market Impact*: Contracting Officers or plant clearance officers shall submit data to DLSC relative to the proposed sale of machine tools of any one type on hand at any single location in minimum condition N3, E1, or O1 with a total acquisition cost exceeding $250,000. Sales data shall include the Plant Equipment

Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances where plant clearance or other expedited actions are involved.

(k) *Reporting of Small Business Data*. The Plant Clearance Officer will assure that the DD Form 1342, DoD Property Record, is properly completed and forwarded to the Defense Industrial Plant Equipment Center as required by paragraph 20601 of the Defense Industrial Plant Equipment Center Operations Manual (DSAM 4215.1, AR 700–43, NAVSUP PUB 5009, AFM 78–9). DIPEC shall accumulate the small business data and prepare semiannual reports as of 30 June and 31 December each year, showing total number of items of Government owned industrial plant equipment sold in the period, the dollar value of such sales and the portions thereof sold to small business concerns. Such reports will be provided on a timely basis to the offices identified in 1–704.2. Reporting Control Symbol *DD-I&L(SA) 1325* is assigned to this reporting requirement.

24–206.2 *Competitive Sales*.

(a) *General*. Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in 24–206.3. To the extent feasible, subcontractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (*i.e.*, serviceable or scrap). In determining the sales method to be used, the plant clearance officer shall consider the expected sales proceeds (based on previous experience and current market) versus the cost of conducting the sale. When he determines that an individual sale will be uneconomical, the material to be sold shall be (i) combined with other material offered for sale, (ii) disposed of through the contractor's approved production generated scrap disposal procedure (see 24–204.4), or (iii) abandoned. Case files will be documented to show the basis for the decision. The contractor's overall program, including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to his surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution. Pursuant to 24–102(xvi) when the the plant clearance officer determines that sale services are required, such service will be arranged for by the plant clearance officer directly with the organization requested to provide the service. The plant clearance officer will justify and document this need. These documents shall be a part of the plant clearance case file. The agreement reached will provide for the Defense Surplus Sales Office or General Services Administration Regional Office to return total proceeds to the plant clearance officer for crediting in compliance with 24–206.4(c).

(b) *Solicitation of Bids*. Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in (2) below:

(1) *Formal Bid Procedures*.

(i) bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

(ii) invitations shall be circulated to a sufficient number of prospective bidders to assure wide competition, including the original suppliers and those prospective bidders designated by the plant clearance officer and the contractor;

(iii) in addition to mailing or delivering a notice of the proposed sale to all prospective bidders, the contractor may supplement this sales method by—

(A) displaying a notice of the proposed sale in appropriate public places;

(B) displaying a notice of the proposed sale in appropriate trade journals or magazines, or

(C) publishing a notice of the proposed sale in a newspaper of general circulation in the locality in which the property is located, when the results of such paid commercial advertising is expected to justify the additional expenses involved.

(iv) When the acquisition cost of property to be sold at one time, at one place, is $250,000 or more, notice of each such proposed sale shall be transmitted to the U. S. Department of Commerce, Commerce Business Daily Office, Sales Section, P. O. Lock Box 5999, Chicago, Illinois, 60680. The notice shall be sent at as early a date as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing direct from the text so transmitted without editing or condensing. Double space lines will be used to describe each sales action; and the length of the line should be approximately 65, but not to exceed 69 character spaces and will contain the following information in the order listed: the name and address of the contractor who will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable, the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, *i.e.*, sealed bid, spot bid, or auction; and the location(s) of the property. The utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. Where the acquisition cost is less than $250,000, such notice may be transmitted, when considered desirable, in accordance with the procedures prescribed above.

(2) *Informal Bid Procedures*. When the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale or other special circumstances are present, invitations to bid may, with the approval of the plant clearance officer, be issued orally, by telephone or by other in-

formal media, so long as the element of competition is maintained and each such sale is fully documented to include a record of solicitations and written confirmation of informal bids. Any bid by the contractor or his employees shall be submitted to the plant clearance officer prior to solicitation of bids by the contractor from other prospective bidders.

(c) *Formal Invitations*. Sale by formal invitation shall include as a minimum general sale terms and conditions provided in 24-302.8(a), and when necessary, special conditions in 24-302.8(b). The plant clearance officer or his representative shall be present to witness bid openings. Within two working days after bid opening, the contractor shall submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative. All awards shall be subject to the approval of the plant clearance officer as indicated in (e) below.

(d) *Bid Reservations*. All invitations for bid shall reserve the right to reject any or all bids and shall require payment of the full purchase price prior to delivery of the property to the purchaser.

(e) *Approval of Sale*. Bids shall be evaluated by the plant clearance officer to establish that the sale price is fair and reasonable in the light of reasonable knowledge or test of the market, due regard being given to current prices for products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the property. Award shall be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who would not be eligible to enter into a sales contract with the Department of Defense in accordance with the provisions of the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors (see 1-600). If it is determined that an award to a contractor on a Joint Consolidated List would be in the best interest of the Government, the plant clearance officer shall request approval from the departmental headquarters of the administering activity. Current market appraisal or price received may be obtained from DLSC upon request.

(f) *Award by Contractor*. The plant clearance officer shall notify the contractor, within five working days, of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

24-206.3 *Negotiated Sales*.

(a) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the procuring department or the plant clearance officer determines and documents in accordance with 3-305 or 24-210(iv), as appropriate, that the use of this method of sale is essential to expeditious plant clearance, or is otherwise justified on the basis of circumstances enumerated below, *provided*, that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceed which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are:

- (i) scientific equipment allocated to terminated research and development contracts with educational institutions;

(ii) when no acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(iii) when property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(iv) when the disposal will be to states, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(v) when the specialized nature and limited use potential of the property would create negligible bidder interest;

(vi) when removal of the property would result in a significant reduction in value, or the accrual of disproportionate expenses in handling; or

(vii) when it can be clearly established that such action is essential to the Government's interests.

(b) In those instances where the procuring department has concluded that it is appropriate to sell production equipment to the contractor in possession by means of noncompetitive negotiated sale, the department will provide the CAO with the required sales justification including any special sales provisions that may be appropriate.

24-206.4 *Proceeds of Sale.*

(a) When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until he has verified that credit has in fact been applied unless another Government representative has specifically assumed this responsibility.

(b) Proceeds from contractor-conducted sales which have not been credited as provided in (a) above shall be collected by the contractor and remitted to the plant clearance officer.

(c) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within two working days after receipt. Transmittals shall identify the procurement contract by number and name of the contractor.

24-206.5 *Applicability of Antitrust Laws.* When contractor inventory with an acquisition cost of $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interests, the Department concerned shall promptly notify the Attorney General and the Administrator of the General Services Administration of the proposed disposal and the probable terms or conditions thereof. Prior to approving or effecting the proposed disposition, the plant clearance officer shall obtain antitrust clearance by transmitting the following information relative to the proposed sale through departmental channels of the administering activity for submission by that activity to the Department of Justice and the General Services Administration: Report Control Symbol DD DR&E(AR) 1492 has been assigned for this reporting requirement.

(i) location and description of property (specifying the tonnage, if scrap);
(ii) proposed sale price of property (explaining the circumstances if proposed purchaser was not highest bidder);
(iii) acquisition cost of property to Government;
(iv) manner of sale, indicating whether by—
  (A) sealed bid (specifying number of purchasers solicited and bids received),
  (B) auction or spot bid (stating how sale was advertised), or
  (C) negotiation (explaining why property was not offered for sale by competitive bid);
(v) proposed purchaser's name, address, and trade name (if any), under which he is doing business;
(vi) if a corporation, give name of State and date of incorporation, and name and address of—
  (A) each holder of 25 percent or more of the corporate stock,
  (B) each subsidiary, and
  (C) each company under common control with proposed purchaser;
(vii) if a partnership, give—
  (A) name and address of each partner, and
  (B) other business connections of each partner;
(viii) nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national;
(ix) estimated dollar sales volume of proposed purchaser (as of latest calendar or fiscal year);
(x) estimated net worth of proposed purchaser; and
(xi) proposed purchaser's intended use of property.

Disposition shall be withheld pending receipt of advice from the Attorney General as to whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made. When property with a total acquisition cost of $3,000,000 or more is offered for sale on a competitive bid basis, the condition of sale specified in 24-302.8(b) (viii) shall be included in the invitation for bid. When the sale is not competitive, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General. The purchaser on either a competitive or noncompetitive sale shall be required to complete a questionnaire, providing the information outlined in (v) through (xi) above.

24-206.6 *Foreign Contractor Inventory.*

(a) To prevent diversion, transshipment, or re-export of contractor inventory located in foreign countries to prohibited destinations (as listed in 6-401.2) and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory by the contractor, including sales to foreign governments, shall be made in accordance with (b) and (c) below.

(b) Sales contracts or other documents for passing title to foreign contractor inventory shall contain the following certificate.

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The Purchaser certifies that the property covered by this contract will be used in (Insert name of country). In the event resale or export is to be effected by the Purchaser of any of the property, acquired at a price in excess of One Thousand United States Dollars ($1,000) or its equivalent in other currency at the official rate of exchange, the Purchaser agrees to obtain the approval of

....

(Insert name and address of Property Disposal Contracting Office).
(1968 FEB)

(c) The property disposal (contracting) officer shall approve sales contracts and requests for approval of resales or exports only if:

(i) the proposed purchaser's name does not appear on a consolidated list of ineligible, debarred and suspended bidders, and

(ii) if the sales contract contains a provision prohibiting exports by purchasers and subpurchasers to communist areas (as listed in 6-401.2).

(d) Any disposals of foreign contractor inventory by the United States Government, as distinguished from disposal by a contractor, shall be in accordance with the security trade control regulation on foreign excess sales, and regulations dealing with integrity and reliability checks.

(e) Generally, disposal activities of the Military Departments shall be utilized to accomplish the disposition of surplus contractor inventory located in foreign countries except Canada. Contractor-conducted sales may be authorized, *provided* the interests of the Government are adequately protected.

24-207 Donations.

(a) Property may be donated only after it has been determined to be surplus following appropriate utilization screening, as provided in this Section. The donation of surplus property to an authorized donee is subordinate to any need for property by a Federal agency, but takes precedence over sale (after screening), destruction, or abandonment. Surplus property which has been made available for donation and is not frozen within the donation screening period is not subject to donation after such property has been recorded on a sales offering in the final format.

(b) Classification of eligible donees in order of precedence and approval requirements are:

(i) for property schedules transmitted to GSA—

(A) *Public Airports*. Donations approved during the first five days of the donation screening period. State or local public airport donations require approval of an appropriate Official of the Federal Aviation Administration, Department of Transportation, and GSA.

(B) *Service Educational Activities* (*SEA*). Donations approved during the second five days of the donation screening period. Approval required of their national headquarters and GSA.

(C) *Educational, Public Health, and Civil Defense Institutions and Organizations*. Donations approved on a first-come, first-served basis with public airports and SEAs, during the last five days of the donation screening period. The Department of Health, Education, and Welfare has the over-all responsibility for selecting property determined to be usable and necessary for educational, public health and civil defense purposes, including research for any such purposes. Surplus property is screened and distributed for educational, public health, and civil defense purposes by State Agencies for Surplus Property (SASP). Approval of GSA is required.

(ii) For property screened in accordance with 24–205.1(e), public airports, SEAs, and SASP screen and select property for donation approval by GSA on a first-come, first-served basis.

(iii) *Public Bodies*. Surplus property may be donated to public bodies in lieu of destruction or abandonment in accordance with paragraph 24–208(c).

(c) In addition to the activities indicated in (b) above, a Department may donate, without expense to the United States, certain material not needed by the Department of Defense to (i) veterans' organizations, (ii) soldiers' monument associations, (iii) state museums, and (iv) incorporated museums operated and maintained only for educational purposes, whose charter denies them the right to operate for profit. For guidance as to limitations and requirements for donation to these activities, see Chapter III, Part 3, DoD 4160.21 M.

(d) The General Services Administration will arrange for donation screening during the last 15 days of the 90 day screening period for serviceable property, as provided by 24–205.2(c) and 24–205.3(d). For property not formally screened with the General Services Administration, see 24–205.1(e). During this period, the plant clearance officer shall maintain applicable inventory schedules in a donable property file, which shall be made available for screening by eligible donees. Donees have the responsibility for notifying the plant clearance officer of items selected for donation and for initiating request for approval to the appropriate General Services Administration Regional Office.

(e) At the expiration of the 15 day donation screening period, items which have not been selected for donation shall be disposed of by sale, or when warranted, abandoned or destroyed. Items which have been selected for donation shall not be disposed of for a period not to exceed 40 days from the start of the donation screening period. Release of the property to eligible donees shall be authorized by the plant clearance officer immediately upon receipt of General Services Administration approval and appropriate shipping instructions. If approval and shipping instructions, including provision for payment of all costs incident to donation, are not received within the 40 day period, the property shall be disposed of otherwise as surplus.

(f) All costs for which the Government is responsible, incident to donation, shall be borne by the donee. Questions concerning the reasonableness of such costs to be borne by the donee shall be referred to the plant clearance officer for appropriate action. The plant clearance officer may utilize the services of qualified Government technical personnel to ascertain the reasonableness of cost quotations for packing, handling, crating, and preparation of items for shipment.

(g) Property required for Government use may be withdrawn at any time prior to shipment or delivery to a donee.

(h) To assist the Department of Health, Education, and Welfare (DHEW) in locating property which is available for donation, each Department shall furnish DHEW with a directory of activities where donable property files are maintained and may be reviewed.

24-208 Destruction or Abandonment.

(a) Surplus property which is not otherwise disposed of under this Section may be destroyed or abandoned, *provided*, that the plant clearance officer has determined in writing that:

(i) it has no commercial value and no value to the Government;
(ii) the estimated cost of its care and handling is greater than the probable sale price; or
(iii) because of its nature it constitutes a danger to public health, safety, or welfare.

(b) Except to the extent permitted by provisions of the contract, no contractor inventory shall be abandoned in the contractor's premises without the contractor's written consent.

(c) Surplus property may be donated to public bodies in lieu of abandonment or destruction provided the determination has been made pursuant to (a)(i) or (ii) above. (See 24-201(c).)

24-209 Removal and Storage.

24-209.1 *General*. Contractor inventory shall be removed from the contractor's premises as expeditiously as possible to facilitate clearance of the contractor's plant or work area and to preclude the possibility of incurring storage expenses.

24-209.2 *Special Storage at the Risk of the Contractor*. When the contractor finds it necessary to remove property from his premises prior to completion of disposal action, or prior to expiration of the plant clearance period in the case of a termination, he may, upon written notice to the plant clearance officer, store any items of inventory not previously disposed of in a warehouse or other storage location on or off his own premises, unless otherwise directed by the plant clearance officer within ten days of the receipt of such notice by the plant clearance officer. Such storage shall in no way modify the responsibility of the contractor with respect to such property. The expense of such storage, including any cost incident to the transportation to and from the storage area, shall be borne by the contractor and shall not be charged directly or indirectly to Government contracts, unless the contracting officer determines that such expense is for the convenience of the Government.

24-209.3 *Special Storage at the Expense and Risk of the Government*.

(a) Contractor inventory will be stored only when a determination is made by the departmental purchasing office or the inventory control point that contractor inventory should be retained in storage for future anticipated use. When the Department purchasing office or the inventory control point determines that contractor inventory should be stored, they shall advise the plant clearance officer of:

(i) specific items to be stored;
(ii) reason for retention;
(iii) period of time contractor inventory should be retained in storage; and
(iv) office responsible for authorizing retention.

(b) At any time after expiration of the plant clearance period (see 24-101.18), the contractor may submit to the contracting officer, a list certified as to quantity and quality, of any items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the contracting officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government shall accept title to such items and remove them or enter into a written storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the contracting officer upon removal of the items (or if the items are stored, within 45 days from the date of submission of the list). Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) Upon receipt of request to store contractor inventory as provided in (a) above, the plant clearance officer shall request the responsible purchasing office or the purchasing office of the activity authorizing storage to execute a storage agreement. The request shall include the following data:

(i) copy of the Departmental purchasing offices or inventory control points request for storage;
(ii) contractor's request for storage, together with statement as to Government's obligation to store inventory;
(iii) inventory of property to be stored;
(iv) storage space required (actual or estimated);
(v) storage period (actual or estimated); and
(vi) cost (actual or estimated), if cost to the Government will be involved, or statement that contractor will execute a no-cost storage agreement. (Storage agreements for contractor inventory will be executed on a no-cost basis whenever possible.)

(d) If the holding contractor will not agree to store the property, and removal from the contractor's premises is necessary, the plant clearance officer shall ascertain the availability of Government and/or commercial storage facilities and shall provide the purchasing office of the activity authorizing storage with the following data in addition to that required in (c) above:

(i) information as to the availability of Government and/or commercial storage facilities;
(ii) services which will be performed (*e.g.*, packing, crating, shipping);
(iii) estimated expense of storage and services if stored in commercial facilities, together with any bids available; and
(iv) any other pertinent information, including the plant clearance officer's recommendation.

(e) Contract will be executed in accordance with established procurement procedures and will reflect the activity directing storage of the inventory involved. Two months prior to expiration of the storage contract, the field contract administration activity shall contact the activity for which the inventory was stored to determine whether the inventory should be retained for an additional period, or disposed of according to plant clearance procedures.

24-210 Property Disposal Determinations. Written determinations supporting disposal actions in the following categories shall be made and placed in the plant clearance case file:

(i) salvage determination;
(ii) scrap determinations (not required for production scrap);
(iii) abandonment and/or destruction determinations;
(iv) disposal by noncompetitive sale; and
(v) other actions considered necessary by the plant clearance officer.

Determinations shall be recorded on DD Form 1641, Disposal Determination/Approval.

24-211 Reserved.

24-212 Subcontractor Inventory.

24-212.1 *General Policy.*

(a) The prime contractor and each subcontractor are responsible for review and approval of inventory schedules submitted by their respective next lower-tier subcontractors. Any rights which the prime contractor has or acquires in the inventory of his first-tier or lower-tier subcontractors, shall, to the extent directed by the contracting officer, be exercised for the benefit of the Government in accordance with the provisions of the contract between the Government and the prime contractor. The disposal policies and procedures set forth in this Section are applicable to contractor inventory in the possession of subcontractors, except subcontractor termination inventory to which 8-209.4 applies, and other exceptions set forth in this Part.

(b) Subcontractor inventory shall be reported through the next higher-tier subcontractor to the prime contractor, who is responsible for reporting such property to the plant clearance officer having cognizance of the prime contractor's plants in accordance with 24-203.1.

(c) When the property is located outside of his geographic area, the plant clearance officer for the prime contractor's plant shall transfer plant clearance responsibility to the plant clearance officer for the plant where the property is located. The plant clearance officer receiving the plant clearance request shall verify, screen and effect disposition within the time frame applicable under the prime contract. The plant clearance officer assuming plant clearance responsibility shall provide the prime plant clearance officer with all pertinent records including the DD Form 1636, Inventory Disposal Report (IDR), upon completion of plant clearance action. A copy of the DD Form 1636, IDR, will be retained by the plant clearance officer who prepared the form.

24-212.2 *Inventory Schedules.* With the exception of inventory to which 8-209.4 applies, the forms of inventory schedules set forth in F-200.542, F-200.542c, F-200.543, F-200.543c, F-200.544, F-200.544c F-200.545, F-200.545c, and F-200.832 may be used; but, their use is not required if substantially equivalent information as set forth in 24-203 is obtained.

24-212.3 *Scrap.* The prime contractor and each higher-tier subcontractor shall review any recommendations of their respective subcontractors concerning scrap. If the prime contractor or the higher-tier subcontractor determines that any of the property is serviceable or usable, the subcontractor shall submit revised inventory data in accordance with such determination. The Government shall not be bound by any determination that property is scrap unless the determination has the prior approval of a plant clearance officer. A scrap warranty shall be obtained whenever property is sold as scrap, except as provided in 24-204.

24-213 Accounting for Contractor Inventory.

(a) In accordance with the terms of the inventory schedules certificate set forth in the forms prescribed in 24-203.3, the contractor or subcontractor shall inform the Government of any substantial change in the status of the inventory arising between the date of submission of inventory schedules and final disposition of the inventory.

(b) As soon as plant clearance has been effected and disposal proceeds have been properly applied, the plant clearance officer shall prepare and distribute DD Form 1636, Inventory Disposal Report, in accordance with 24-302.2.

(c) When any contractor inventory is lost, destroyed, damaged, or for any reason cannot be delivered by the contractor, that inventory shall be identified in the Inventory Disposal Report, and the matter reported to the Government property administrator, or to the termination contracting officer if termination inventory is involved.

PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

Part 3—Forms, Instructions, and Reports

24-301 Forms. The forms listed below are prescribed for use in the performance of plant clearance actions covered in this Section.

24-301.1 *Standard Form 97, Certificate of Release of a Motor Vehicle, and Standard Form 97A, Certificate of Release of a Motor Vehicle (Agency Record Copy)*, will be executed by the contracting officer and furnished to the purchaser. Plant clearance officers will process Standard Form 97 in connection with transfers, donations, and sales of motor vehicles. Precautionary measures will be taken to prevent unauthorized persons from obtaining these forms. (See F-100.97 and 24-302.8(a)(v).)

24-301.2 *Standard Form 120, Reporting of Excess Personal Property*, shall be used as a cover form for transmitting inventory schedules to all screening activities except DIPEC. A form letter prepared in accordance with 24-302.7 will be used to forward DD Forms 1342 to DIPEC for screening. However, Standard Form 120 may be used for this purpose (see F-100.120, 24-205.2, and 24-302.6).

24-301.3 *Standard Form 125, Report of Strategic and Critical Materials*, shall be used to report these materials to the General Services Administration in accordance with provisions of 24-205.4(d). (See F-100.125.)

24-301.4 *DD Form 1131, Cash Collection Voucher*, shall be used to remit proceeds of sale to the appropriate disbursing officer. (See F-200.1131 and 24-206.4(c).)

24-301.5 *DD Form 1149, Requisition and Invoice Shipping Document*, shall be used for transfers and donations of excess or surplus contractor inventory except IPE (see F200.1149). IPE shall ordinarily be shipped by DD Form 1348-1 (see 24-301.17) except that any donation of IPE may be shipped via DD Form 1149.

24-301.6 *DD Form 1342, DoD Property Record*, shall be used to report idle industrial plant equipment to DIPEC for worldwide screening. (See F-200.1342, 24-205.3; see DSAM 4215.1, AFM 78-1, NAVSUP PUB 5009, AR 700-43, for instructions on how to prepare this form.)

24-301.7 *DD Form 1483, Shipping Document for GFM Turn-in*, is a form authorized for turn-in of government-furnished material.

24-301.8 *DD Form 1640, Request for Plant Clearance*, shall be used to request plant clearance assistance or transfer plant clearance (see 24-212).

24-301.9 *DD Form 1636, Inventory Disposal Report*, shall be prepared for each completed plant clearance case (see 24-302.2).

24-301.10 *DD Form 1638, Report of Excess and Surplus Contractor Inventory*, shall be used to provide a uniform reporting system of essential management data reflecting the scope and effectiveness of the contractor inventory utilization and disposal program (see 24-302.3).

24-301.11 *DD Form 1641, Disposal Determination/Approval*, shall be used to support disposal determinations.

24-301.12 *DD Form 1639, Scrap Warranty*, shall be executed by a purchaser of scrap in accordance with 24-204.5.

24-301.13 *DD Form 1642, Inventory Verification Survey*, shall be used to record verification results as prescribed in 24-203.7(b) (see 24-302.1).

24-301.14 *DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory*, shall be made available to contractors to assist them in properly preparing inventory schedules (see 24-203.1).

24-301.15 *DD Form 1635, Plant Clearance Case Register*, provides a permanent numerical listing of plant clearance cases and shall be maintained by each office performing a plant clearance function. The space provided on the right-hand side of the form may be used for additional columns and headings considered essential by management officials (see F-200.1635 and 24-302.4). In those instances when the plant clearance register has been mechanized, a mechanized form may be used in lieu of the DD Form 1635.

24-301.16 *DD Form 1637, Notice of Acceptance of Inventory*, shall be prepared to open each case and shall be distributed as follows: original to the contractor, one copy to the property administrator, and one copy to the termination contracting officer when termination inventory is involved.

24-301.17 *DD Form 1348-1, DoD Single Line Item Release/Receipt Document*, shall be used for all transfers of idle Industrial Plant Equipment inventory when directed by DIPEC (see F200.1348-1).

24-302 Instructions. Additional instructions are provided below for completing the forms or reports prescribed in this Section.

24-302.1 *Instructions for Performing Inventory Verification and Determination of Allocability*. The following instructions shall be observed in verifying inventory schedules.

(a) *Allocability*. Determine allocability of inventory by reviewing contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include:

- (i) material which would not have been required for completion of the terminated or modified portion of the contract;
- (ii) material in quantities indicating an unreasonable anticipation of contract requirements; or
- (iii) material which might be utilized on the continuing portion of the contract, or diverted to other work of the contractor, either commercial or Government. Utilize sound judgment and experience gained during the life of the contract in detecting common items. In addition review—
  - (A) contractor's purchase orders for current procurement of similar material,
  - (B) contractor's plans and orders for current and scheduled production,
  - (C) contractor's stock record cards, and
  - (D) contractor's bills of material prepared for items similar to the terminated or modified items.

(b) *Quantity*. Assure that the quantities of inventory available are in accordance with the quantities listed on the inventory schedules. While a complete physical count of each item of inventory normally need not be performed, sufficient checks to assure that the quantities are accurate shall be performed. (See Sampling Guide in (d) below.)

(c) *Condition*. Assure that the condition of the inventory is in accordance with that shown on the inventory schedules.

(d) *Sampling Guide*. Use minimum sampling standards indicated below. If significant discrepancies are revealed, increase sampling size.

(i) to determine which of the items listed on inventory schedules should be subjected to verification, all of the inventory schedules which comprise any one class would comprise one lot (e.g., all Schedule A items would comprise one lot; all Schedule B would comprise a second lot, etc.);

(ii) each lot shall be examined to determine the number of lines in each of the dollar groupings in column A below;

(iii) the percentage in column B shall be applied to the total number of such lines in each dollar grouping to obtain the number of lines to be verified. Example: Assume that one lot of all items listed on Schedule B consists of 20 pages with a total of 160 lines of various items of Raw Material, Purchased Parts, etc., to determine the (minimum) number of lines of the total of 160 which are to be verified, the steps outlined above are applied as follows:

A	B
Line Extension Dollar Amount	Percentage
$ 1 to $ 9.99	5%
10 to 99.99	10%
100 to 499.99	25%
500 to 999.99	50%
1,000 and over	100%

Line Extension Dollar Amount	Total Number of Lines	Percentage	Total Number of Lines To Be Verified
$ 1 to $ 9.99	100	5%	5
10 to 99.99	10	10%	1
100 to 499.99	16	25%	4
500 to 999.99	20	50%	10
1,000 and over	14	100%	14
TOTAL	160		34

(iv) Having determined (from the above) the number of lines to be verified, the lines shall be chosen at random from each applicable subgroup. All of the units on each line selected shall be thoroughly verified as to quantity, condition, etc., in accordance with the following—

(A) *Schedule A Items—Metals in Mill Product Form*. Exact determination of the quantities or weights listed is not required; however, a check shall be made to verify that the amount or weight is approximately correct. For example, on a line listing 3,400 pounds of steel strip in rolls, visually select an average-size roll, have it weighed, and multiply this weight by the number of rolls. Likewise, for wire on spools with the total quantity indicated in pounds, weigh several spools to verify weight shown on each spool. If correct, accept the weight as shown on each spool and merely total the various spool weights. For material susceptible to these checks, the dimensions of single samples should be checked by scale or micrometers. The composition, hardness, type alloy, etc., listed on the schedules should be checked against original tags or markings of the producer whenever possible.

(B) *Schedule B Items—Raw Materials* (*other than metals*), *Purchased Parts, etc.* Visually check representative sample pieces from each line selected for inspection to verify identity. Refer to Technical Manuals and Government and commercial drawings to the extent necessary for satisfactory identification. For small purchased parts, weight count the material. When an item is packed in similar size containers, equally loaded, weight counting of several such containers and multiplying by the number of containers is satisfactory. On purchased parts still in the original supplier's packages, acceptance of the quantity shown on the original marking is satisfactory. Finished Product and Finished Components shall be inspected for strict compliance with contract specifications. Finished Product reported in connection with a terminated contract shall be verified to the same extent as would have been required in the absence of termination. Be particularly alert to the possibility of the contractor's having included rejects or spoilage as acceptable inventory.

(C) *Schedule C Items—Work in Process.* Visually examine representative samples from each line selected for inspection to determine that the state of completion agrees with that shown on the schedules. Refer to specifications, drawings, bills of material, etc., as necessary, for this verification. Be particularly alert to prevent the inclusion of nonreworkable rejects or spoilage.

(D) *Schedule D Items—Dies, Jigs, Fixtures, and Special Tools.* Visually examine representative samples from each line selected for inspection to verify identity. Identity can usually be ascertained by part numbers stamped on or molded into the tools. Particular alertness shall be exercised to ascertain that these items were actually required in the production of the items under the terminated, modified, or completed contract and that they were not common to the contractor's other manufacturing processes.

(e) *Completion of Inventory Verification Survey.* As soon as verification has been accomplished, the completed survey form should be returned to the plant clearance officer, together with one copy of inventory schedule(s) marked to identify items selected for sampling.

24-302.2 *DD Form 1636, Inventory Disposal Report,* shall be prepared for each completed plant clearance case. Inventory Disposal Reports shall be distributed to the appropriate contracting officer and the property administrator and to the referring activity when a case is forwarded to another activity for plant clearance actions. The primary plant clearance officer shall be responsible for preparing and distributing a consolidated Inventory Disposal Report, as appropriate. All items on the form are self-explanatory, except as follows:

(a) *Item 11*. Insert total dollar value of inventory reported for plant clearance purposes.

(b) *Item 12*. Insert amount to be deducted from the gross value of inventory due to errors in pricing, shortages, overages, etc. Explain "Remarks," Item 25.

(c) *Item 14*. Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost (see 24-202).

(d) *Item 15*. Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges (see 24-202.2).

(e) *Item 16*. Insert the total acquisition cost of all transfers accomplished. For lines 16A through 16F, insert subtotals representing value of transfers to each service or agency indicated.

(f) *Items 18 Through 20*. Insert acquisition cost and gross proceeds. Where approved costs of sale are reimbursed from proceeds, net proceeds shall be identified under "Remarks."

(g) *Item 21*. Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(h) *Item 24*. May be used to report transactions not otherwise identified.

(i) *Item 27*. (1) Explain all entries in Item 12. (2) Show specific disposition of proceeds reported in Items 14 and 15; *i.e.*, indicate contract number and invoice to which proceeds were applied and verified, amounts deleted from specific contractor claims, or applied as a credit to the claim. If payment was made to the Government, indicate disbursing office where proceeds were deposited. (3) Explain any unusual entries requiring explanation.

24-302.3 *DD Form 1638, Report of Excess and Surplus Contractor Inventory*, shall be used by all contract administration offices having plant clearance responsibility for reporting cases under which disposition of contractor inventory actually has been effected. Cases transferred to other offices will not be included. Only the column total for each line of this report will be completed, unless the departmental headquarters of the administering activity desires a breakout of DIPEC-controlled property and directs completion of other column. Reports shall be prepared on a quarterly basis covering report periods ending 31 March, 30 June, 30 September, and 31 December and shall be submitted in duplicate to the Departmental Headquarters of the administering activity, no later than ten working days after the close of the report period. This reporting requirement is assigned Report Control Symbol: DD (I&L) (Q) 1430. All items on the report are self-explanatory except as follows:

(a) *Line 1*. Insert exact totals from line 7 of preceding report.

(b) *Line 2*. Insert net increase or decrease due to shortage, overages, errors, or withdrawals (other than purchases or retentions at cost).

(c) *Line 3*. Insert totals representing all excess inventory reported by the contractors for plant clearance purposes during reporting period.

(d) *Line 4*. Insert total of lines 1, 2 and 3.

(e) *Line 5*. Insert totals representing all plant clearance cases completed during the reporting period. Cases shall not be reported as completed until physical removal (or other final disposition) has been accomplished. Acquisition cost must equal acquisition cost on line 19.

(f) *Line 8*. Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost (see 24-201).

(g) *Line 9*. Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges (see 24-202.2).

(h) *Line 10*. Insert total acquisition cost of all transfers accomplished during the reporting period. On lines 10A through 10H, insert subtotals representing value of transfers to each service or agency indicated. Line 10 represents the total of the individual amounts shown on lines 10A through 10H. Caution should be taken to exclude the amounts on lines 10A through 10H when obtaining the grand total on line 19 of the several columns of Section II.

(i) *Lines 12 Through 14*. Insert gross proceeds. When approved costs of sale are reimbursed from proceeds, net proceeds shall be identified in "Remarks."

(j) *Line 15*. Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(k) *Lines 16 and 18*. Lines 16 and 18 may be used to identify and report transactions not otherwise identified.

(l) *Line 19*. Insert total of lines 8 through 18. Acquisition cost must equal acquisition cost on line 5.

24-302.4 *Instructions for Establishing a Plant Clearance Case*. Upon receipt of acceptable inventory schedules or DD Form 1342 from the contractor or from other Government sources provided by this Section, the plant clearance officer shall assign a plant clearance case number in accordance with 24-302.5 and establish a plant clearance case file. The case number, contractor's name, and contract number shall be identified on the case folder. Termination inventory shall be identified with the word "Termination" on the outside of the case folder to insure priority handling. Separate submissions of inventory schedules and DD Forms 1342, applicable to one contract at the same location, shall be consolidated, whenever possible, under one plant clearance case. The plant clearance case file, as a minimum, shall contain the following:

(i) copy of DD Form 1637, Notice of Acceptance of Inventory;
(ii) copy of inventory schedules or DD Form 1342 (The copy of the inventory schedule will be annotated by the plant clearance officer to reflect all disposal actions accomplished. Upon completion of all plant clearance actions, this copy should reflect disposition of all inventory reported for plant clearance action.);
(iii) copy of letters or transmittal documents forwarding contractor inventory to the appropriate screening activity;
(iv) copies of all shipping instructions, correspondence, or other instructions directing the disposition of contractor inventory, or evidence of no requirements;
(v) copies of all shipping documents accomplishing transfer or shipment of contractor inventory;
(vi) copy of Inventory Verification Survey or other forms evidencing completion of allocability review;
(vii) copies of appropriate forms authorizing donation;

(viii) copies of all appropriate forms evidencing the sale of contractor inventory;

(ix) appropriate documentation indicating proper disposition of any proceeds resulting from plant clearance action;

(x) copies of all other correspondence or forms bearing on disposal actions concerned with the case;

(xi) copies of all pertinent correspondence and approvals concerning Property Disposal Review Board cases, and antitrust clearance, when required; and

(xii) copy of Inventory Disposal Report.

24–302.5 *Instructions for Assigning Plant Clearance Case Number.*

(a) The plant case number shall consist of a three-part, 11–digit number constructed as follows:

(i) The first part shall be a six digit (Alphanumeric combination), as shown in the DoD Activity Address Directory (see DSAH 4140.1, AR 725-50-1, MCOP 4420.2C, CG 364, AFM 75–6) assigned to the contract administering activity.

(ii) The second part, digits 7 through 10 shall consist of the following:
7th through 9th digits—Consecutively numbered serial number, locally assigned, using Alpha and numeric characters commencing with 001 at the beginning of each calendar year, and continuing as necessary through ZZZ.
10th digit ....The last digit of the calendar year.

(iii) The third part, 11th digit, will be a single Alpha code to identify the Department:
C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Supply Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—National Aeronautics and Space Administration
O—Non-DoD Activities

(b) Combined, the plant clearance case number assigned by the plant clearance officer will be in accordance with the following examples:

"S2302A—0010—Q" and "S2302A—ZZZ2—Q"

(i) "S2302A" indicates that the Detroit Defense Contract Administration Services Region is designated as the office to which the plant clearance officer is assigned.

(ii) "0010" indicates that this is the first case established by the Detroit Defense Contract Administration Services Region in calendar year 1970 and "ZZZ2" the 8199th case in calendar year 1972.

(iii) "Q" indicates that the Navy is the owning military service.

(c) The plant clearance case number assigned will be recorded on DD Form 1635, Plant Clearance Case Register, which will provide a permanent numerical listing of plant clearance cases.

24–302.6 *Instructions for Preparing Standard Form 120, Report of Excess Personal Property*. The Standard Form 120 will be completed as follows:

(a) *Report Number*. Enter the plant clearance case number.

(b) *Date Mailed*. Enter the date the report is mailed to the Inventory Control Points or the General Services Administration regional office.

(c) *Total Cost*. Enter the total of all amounts shown on the inventory schedules.

(d) *Type of Report*. Indicate the type of report by entering an "X" in the appropriate block. Block 4f will always be completed to show that it is contractor inventory.

(i) *Original*. An original report shall be made to report an initial quantity of an item or items as excess. An original report shall also be prepared to forward contractor inventory to the General Services Administration regional offices.

(ii) *Corrected*. If it is necessary to correct an original report previously submitted, in all cases complete blocks 1, 2, 4, 5 and 7 on the corrected Standard Form 120. Complete the remaining blocks and columns on the form only to the extent necessary to show the correction. For example, if information in block 9 on the original report is the only item that needs correction, complete only block 9 (in addition to the five identification blocks mentioned above) on the corrected report.

(iii) *Partial Withdrawal*. If the report is to withdraw a part of the excess previously reported on an original report, complete blocks 1, 2, 3, 4, 5, and 7. The line items or portions of line items withdrawn from the inventory schedules must be reidentified by an appropriate entry in block 18(a) or (b). The number of units withdrawn must be shown in 18(e) and the acquisition cost applicable to these items to be withdrawn must be shown in 18(g).

(iv) *Total Withdrawals*. If the report withdraws all items on the inventory schedule on an original report, complete blocks 1, 2, 3, 4, 5, and 7 only and provide explanatory remarks in block 18(b).

(e) *To*. Enter name and address of the inventory control point and symbol to which the report is made or the appropriate General Services Administration regional office.

(f) *Appropriation or Fund to be Reimbursed*. Leave blank.

(g) *From*. Enter the name and address of the department, office, or subdivision thereof making the report. For example, the Defense Contract Administration Services Region, Cleveland, would be entered as follows: DSA, DCASR, Cleveland, DCRO-CMC, 1367 East Sixth Street, Cleveland, Ohio 44114.

(h) *Report Approved By*. Enter signature of plant clearance officer.

(i) *For Further Information Contact*. Enter name, title, address, and telephone number of the plant clearance officer who may be contacted for further information about the property.

(j) *Agency Approval*. Leave blank.

(k) *Send Purchase Orders or Disposal Instruction To*. Enter same as (i) above.

(l) *GSA Control No*. Not to be used by reporting activity.

(m) *FSC Group No*. Leave blank.

(n) *Location of Property*. Give the name and address of the contractor who is holding the property.

(o) *REIM/REQD*. (X) No.

(p) *Agency Control No*. Leave blank.

(q) *Surplus Release Date*. Enter date calculated as 75 days from the date that screening in accordance with 24–205.2 was initiated. This is the ARD.

(r) *Excess Property List*. Leave blank.

(i) *Item No*. Leave blank.

(ii) *Description*. In this column enter the following information—

(A) .... copies of inventory schedules attached;
DD Form ...., Pages 1 through ....

(B) Deadline Departmental Screening Date .... (Date 24–205.2(a) screening is to be completed.)

(C) Screening Completion Date .... (Enter date calculated as 90 days from the date that screening in accordance with 24–205.2 was initiated.)

(D) Place the following note in the description column: "In the event that transfer of material other than termination inventory is to be effected, it is imperative that fund appropriations for the transportation, packing, crating, and handling of the materials be furnished with the transfer order."

(E) Inventory schedules submitted to the General Services Administration: Place the following receipt notice in column 18(b): "Receipt is hereby acknowledged: signed by ....; date ...."

(F) Contract number.

24–302.7 *Form Letter for Transmitting DD Form 1342 to DIPEC*. The following minimum information shall be included in the letter:

(i) the number of DD Form 1342 included;
(ii) Automatic Release Date;
(iii) Screening Complete Date;
(iv) contractor's name and address;
(v) Procurement Instrument Identification (Contract) Number;
(vi) the name and address of the procuring activity that awarded the facility or other type contract which permitted the contractor to acquire the industrial plant equipment;
(vii) the location of the industrial plant equipment;
(viii) total acquisition cost;
(ix) a note stating that the ARD will not be extended;
(x) a note substantially as follows: "All requests for transfer or shipment must indicate appropriate fund citation for packing, crating, and handling charges. Government Bills of Lading (GBL) should be furnished when possible. If shipments will be accomplished by other than a GBL, DIPEC must cite transportation funds; and
(xi) a signature block containing the name of the plant clearance officer.

24–302.8 *General Sales Terms and Conditions and Special Conditions of Sale*.

(a) The following general sales terms and conditions shall be included, as a minimum, in contractor-conducted sales by formal invitation:

(i) *Inspection*. The Bidder is invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

(ii) *Condition and Location of Property*. Unless otherwise specifically provided in the Invitation, all property listed therein is offered for sale "as is" and "where is." If it is provided therein that the Contractor shall load, then "where is" means f.o.b. conveyance at the point specified in the Invitation. The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property or its fitness for any use or purpose. Except as provided in Conditions No. (viii) and (x), no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

(iii) *Consideration of Bids*. The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (sixty (60) calendar days if no period is specified by the Contractor or by the Bidder, but not less than (10) calendar days in any case) and that during such period his bid will remain firm and irrevocable. The right is reserved to reject any or all bids, to waive any technical defects in bids, and unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

(iv) *Payment*. The Purchaser agrees to pay for property awarded to him in accordance with the prices quoted in his bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition No. (viii), must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made pursuant to Condition No. (viii), payment must be completed immediately subsequent to such adjustment. The balance of the purchase price after applying the total bid deposit made by the Purchaser (if a bid deposit was required) under the Invitation (or otherwise the full purchase price) shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor reserves the right to apply any bid deposits made under this Invitation by a Bidder against any amounts due to the Contractor under a contract awarded by him under this Invitation for Bid. In those instances where the total sum becoming due to the Contractor from the Purchaser on a contract awarded to him under the Invitation is less than the total amount deposited with his bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

(v) *Title*. Unless otherwise specified in the Invitation, title to the items of property sold hereunder shall vest in the Purchaser as and when full and final payment is made, except that if the Invitation provides that loading will be performed by the contractor, title shall not vest until such payment and loading are completed. On all motor vehicles and motor-propelled or motor- drawn equipment requiring licensing, a certificate of release, Standard Form 97, Certificate of Release of a Motor Vehicle, executed by the Contracting Officer (or a State certificate of title), shall be furnished for each vehicle and piece of equipment.

(vi) *Delivery and Removal of Property*. Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title of the property in him. Delivery shall be made at the designated location, and the Purchaser shall remove the property at his expense within the period of time originally specified in the Invitation or within such additional time as may be allowed by the Contractor. The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by the removal operations of the Purchaser. If the Purchaser is permitted by the Contractor to remove the property after the expiration of the period prescribed or allowed for removal, the Contractor, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge.

(vii) *Default*. If the successful Bidder fails to make full payment, to remove property on the specified date, or to comply with any other terms and conditions thereof, the right is reserved to sell or otherwise dispose of any or all such property and to charge losses and expenses incidental thereto to the account of the defaulting Bidder. The bid deposit (if required in the Invitation) shall be applied against any such losses and expenses.

(viii) *Adjustment for Variation in Quantity or Weight*. When property is sold on a "unit price" basis, the Contractor reserves the right to vary the quantity or weight delivered by fifteen percent (15%) from the quantity or weight listed in the Invitation; and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted upwards or downwards in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation shall be made where property is sold on a "price for the lot" basis.

(ix) *Weighing*. When weighing is necessary to determine the exact purchase price hereunder, the Purchaser shall arrange for and pay all expenses of weighing material. All switching charges shall be paid by the Purchaser. When removal is by truck, weighing shall be subject to supervision and accomplished on (A) contractor scales, (B) certified scales, or (C) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to the railroad for freight purposes. Approved weighing shall establish the exact purchase price and govern the making of full payment thereon.

(x) *Risk of Loss.* After mailing notice of award and prior to the date specified for removal, the Contractor shall be responsible only for the exercise of reasonable care for the protection of the property. After passage of title and after the date specified for removal of the property or any extension approved in writing by the Contractor, all risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser.

(xi) *Limitation on Contractor and Government Liability.* The measure of Contractor and Government liability in any case when liability of Contractor and Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Contractor may have received.

(xii) *Oral Statements and Modifications.* Any oral statement or representation by any representative of the Contractor changing or supplementing the contract or any Condition thereof is unauthorized and shall confer no right upon the Purchaser.

(xiii) *Eligibility of Bidders.* The Bidder certifies that he is not: (1) a civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (2) a member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (3) an agent, employee or immediate member of the household of personnel in (1) and (2) above.

(xiv) *Claims Liability.* The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

(b) The following special conditions of sale shall be included in contractor-conducted sales by formal invitation, as required, or at the specific request and direction of the plant clearance officer:

(i) *Demilitarization.* When demilitarization of property by the Purchaser is required, whether on or off the contractor or Government premises, the following special conditions shall be included in the invitation for bids on property located in the United States or outside the United States, as appropriate—

(A) DEMILITARIZATION. Item(s) .... are required to be demilitarized by the Purchaser in the manner and to the degree set forth below: ....

(I) Insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual, DoD 4160.21-M-1 for property located in the United States.

(II) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21-M-1.

(B) DEMILITARIZATION ON GOVERNMENT PREMISES. The property requiring demilitarization shall not be removed from Government premises and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization and further agrees to do any necessary work to restore the working area to its present condition after completely removing the demilitarized property.

(C) DEMILITARIZATION ON OTHER THAN GOVERNMENT PREMISES. The property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization.

(D) FAILURE TO DEMILITARIZE. If the Purchaser fails to demilitarize the property being sold herein in accordance with the terms of the contract, the contractor may, at his option and upon ten (10) days' written notice (calculated from date of mailing) to the Purchaser:

(I) Repossess the property, complete the demilitarization thereof, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor prior to the return of the property to the Purchaser all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(II) Repossess the property, complete the demilitarization thereof, resell the property, and charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs incurred by the Contractor in repossessing, demilitarizing, and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(III) Repossess the property and resell it under similar terms and conditions. In the event this option is exercised the Contractor shall charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the cost to the Contractor repossessing and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(ii) *Performance Bond.* When work, other than loading, is to be performed by the purchaser and it is considered necessary to insure performance by the purchaser, a performance bond shall be required. Generally, the amount of each performance bond shall be 100% of the estimated cost of the work to be performed. If a requirement for a 100% performance bond would be disadvantageous to the contractor or to the Government, the amount may be reduced to not less than 50% of the estimated cost of the work to be performed.

The execution of a performance bond in a specified amount shall be required, as follows:

Performance Bond. Within ten (10) days after notice of award, the Purchaser shall furnish a performance bond in the sum of $.................. to cover the Purchaser's obligations and undertakings herein. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until such time as the bond has been received.

(iii) *Liability and Insurance*. The following shall be required when the work to be performed by the purchaser warrants a special condition of sale:

Liability and Insurance. The Purchaser shall at his own expense procure and maintain during the term of the contract insurance as follows:

(A) Standard workmen's compensation and employer's liability insurance such as may be proper under State and Federal statutes. However, upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law, the Contractor may waive this requirement.

(B) Bodily injury liability insurance in the amount of not less than $300,000 any one occurrence.

(C) Property damage liability insurance including any and all property, whether or not in the care, custody, or control of the Purchaser.

(iv) *Dangerous Property*. A warning of potential danger shall be included in all cases where it cannot be certified that the property is completely innocuous. The following condition shall be used for this purpose:

Dangerous Property. Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

(v) *Controlled Substances*. The sale of any controlled substance, e.g., narcotics, stimulants, depressants, hallucinogenic drugs, shall be subject to the following special conditions:

Controlled Substances. Bids will be rejected unless the Bidder submits the following certification with his bid: "The undersigned represents and warrants that he is registered under The Comprehensive Drug Abuse Prevention And Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances either as a medical practitioner, dealer or manufacturer of controlled substances."

Narcotic Drugs and Chemicals. Bids will be rejected unless the Bidder submits the following certification with his bid:

"The undersigned represents and warrants that he is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics."

(vi) *Radioactive Material*. The following condition shall be used whenever there is the possibility that the property offered for sale is capable of emitting ionized radiation:

Radioactive Material. Purchasers are warned that the property may be capable of emitting ionized radiation in varying degrees. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from any and all such claims. As a safety precaution, the Purchaser should warn future possessors or users of the property that it may be capable of emitting ionized radiation.

(vii) *Scrap Warranty*. The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap Warranty. The Purchaser represents and warrants that the property will be used only as scrap, in its existing condition or after further preparation, and will not be resold until (A) scrapping has been accomplished, or (B) the Purchaser obtains an identical warranty from any subsequent purchaser.

(viii) *Antitrust Clearance*. When a sales offering includes property with an acquisition cost of $3,000,000 or more, the following condition shall be included:

Antitrust. To comply with Section 207 of the Federal Property and Administrative Services Act of 1949, as amended, when property offered for sale has an acquisition cost of $3,000,000 or more, or when the property consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to sixty (60) days for acceptance of his bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not tend to create or maintain a situation inconsistent with the antitrust laws.

(ix) *Small Business Representation*. The following provision shall be included in the general sales terms and conditions for all formal sales invitations covering contractor conducted sales of surplus industrial plant equipment.

BIDDER REPRESENTS:

(*Check appropriate box*)

1. That he (...) is, (...) is not, a small business concern.

2. Definitions:

(A) Small Business:

For purposes of this sale, a small business concern is a U. S. business concern which, together with its affiliates, falls within one of the classifications set forth in (B) below; is independently owned and operated; and, is not dominant in its field of operation. (See Code of Federal Regulations, Title 13, Part 121, as amended, if additional information is desired).

(B) Small Business Classifications:

(1) Any concern which is primarily engaged in manufacturing, if its number of employees does not exceed 500 persons provided however, that a concern primarily engaged in SIC Industry, 2911, petroleum refining, is small if its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude-oil capacity from owned or leased facilities.

(2) Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph), if the annual sales or annual receipts for its preceding three fiscal years do not exceed $1 million.

(3) Any concern primarily engaged in the purchase of materials which are not domestic products, if its average annual sales or annual receipts for its preceding three fiscal years do not exceed $25 million.

(4) Any concern certified as a small business concern by the Small Business Administration.

(End of Provision)

(c) The following special conditions of sale may be added at the option of the contractor:

(i) *Sales and Use Tax Liability*. If the purchase of the property is subject to a state sales or use tax, a special condition of sale shall be included stipulating that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

(ii) *Safety, Security, and Fire Regulations*.

(iii) *Bid Deposits*.

(iv) *Other Special Conditions*. All other special conditions of sale considered necessary by the Contractor shall be subject to the prior approval of the plant clearance officer. Approval shall be granted, *provided*, the prescribed conditions of sale are not altered or affected thereby and the interest of the Government is not adversely affected.

SECTION XXV —PRODUCTION SURVEILLANCE AND REPORTING

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SECTION XXV

PRODUCTION SURVEILLANCE AND REPORTING

25–000 Scope of Section. This Section establishes the policies and procedures for production surveillance and production progress reporting.

25–001 Applicability. This Section applies to contracts for supplies and services, including research and development and overhaul and repair contracts. When a contract is retained for administration by the purchasing office (see 20–703), the contracting officer will determine the extent to which the Section applies. Facilities contracts (see Section XIII, Part 3) and construction contracts (see Section XVIII) are excluded from this Section.

25–002 General policies. It is the policy of the Department of Defense that the Government perform those production management functions necessary to provide the production or performance progress information required to protect the interests of the Government and fulfill the Government's contract obligations.

PRODUCTION SURVEILLANCE AND REPORTING

Part 1—Production Surveillance

25-101 Definitions.

25-101.1 *Production Surveillance* refers to that part of Government contract administration directed toward (i) determining the degree of progress made by a contractor in meeting his contract delivery or performance schedule and (ii) identifying factors which may delay delivery or performance. It includes, among other things, the review and analysis by the Government of a contractor's performance plans, schedules, controls and industrial processes.

25-101.2 *Criticality* refers to the degree of importance to the Government of supplies or services under contract.

25-101.3 *Delinquency* includes (i) actual failure by the contractor—that is, his failure, regardless of reason, to meet the contract delivery or performance schedule; and (ii) potential failure by the contractor—that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

25-102 General. Timely delivery or performance ordinarily requires realistic and adequate planning and action on the part of the purchasing office, the contractor and the contract administration office. The purchasing office must determine the criticality of the supplies or services under contract. The contractor must translate contract requirements into orderly performance steps (*e.g.*, purchase of materials, fabrication of components, manufacture and assembly of end items, packaging and shipping). The contract administration office, on the other hand, must analyze and evaluate the contractor's plans and, in accordance with the designated criticality of the contract, determine the nature and extent of production surveillance required to provide performance progress information and assure timely progress or prevent or overcome any delinquency.

25-103 Assignment of Criticality Designator by Purchasing Office. Purchasing offices shall assign Criticality Designator A, B or C to each contract in accordance with the criteria given below and, if Designator A or B is assigned, shall include such designator on each contract in the space for designating the contract administration office. The assigned designator may be changed only by the purchasing office. The lowest designator consistent with the Government requirements shall be assigned. Ordinarily, unilateral purchase orders shall be assigned Criticality Designator C. This will permit the contract administration office to apply its resources most effectively toward meeting the Government's priorities.

Criticality Designator	*Criteria*
A	Contracts in one of the categories below: (i) for system and major systems acquisition programs as defined by DoDD 5000.1, Major System Acquisitions; (ii) which are DX rated; (iii) which are negotiated under Public Exigency (3-202);

Criticality Designator	*Criteria*
A (cont.)	(iv) for items on which a priority designator 01, 02, 03 or 06 has been assigned based on DoDD 4410.5, Uniform Materiel Movement and Issue Priority System; or (v) for nonstocked items which otherwise meet the criteria for Force Activity Designator I and Urgency of Need Designator A as defined in DoDD 4410.6.
B	Contracts not assigned Criticality Designator A, wherein time of delivery is essential: (i) to meet user needs for nonstock items; (ii) to preclude out-of-stock situations; or (iii) to preclude interruption to ongoing Government or contractor production or repair lines.
C	All other contracts which do not qualify under Criticality Designators A or B.

25–104 Production Surveillance by the Contract Administration Office.

25–104.1 *General.* The contract administration office, at a minimum, shall provide the level of production surveillance appropriate to the criticality designator of the contract. As programs, needs and conditions change, production surveillance requirements also may change. In any case, it is the continuing responsibility of the contract administration office to assure that production surveillance is maintained at least at the minimum level consistent with the criticality designator, the criticality information provided by the purchasing office, and contractor capability and performance information available to the contract administration office. In performing this function, the contract administration office shall avoid any action (*e.g.*, directing expedited performance) which may be inconsistent with contract requirements and result in claims of waivers, change or other contract modification. After delinquency has occurred, and before the procuring contracting officer has determined the action to be taken, it is particularly important that surveillance be limited to fact finding to avoid waiver of the contract delivery and performance schedules.

25–104.2 *Factors Affecting Production Surveillance.* In determining the degree of surveillance to be applied in accordance with the criticality designator of a contract, the contract administration office shall be guided by factors such as the following:

(i) contract provisions for production progress and performance reporting,
(ii) the contract performance schedule,
(iii) the contractor's production plan,
(iv) the contractor's history of contract performance,
(v) the contractor's experience with the contract supplies or services, and
(vi) the contractor's financial ability.

25–104.3 *Assignment of Production Surveillance Categories.*

(a) The contract administration office shall assign contracts to production surveillance or review categories as follows:

Category 1 is conducted by an industrial specialist or other person qualified to assess the contractor's plan for production and evaluate progress toward the successful accomplishment of that plan. This type of effort is adaptable to contracts which have a production/performance lead time of at least several months, and which entail identifiable milestone or pacing events against which progress may be measured. Contracts assigned this category should include those contracts which are of the complexity described above, and have a Criticality Designator A or are with a contractor which has either a history of generally poor production performance or a poor performance history on the same or similar supplies or services as those on the current contract.

Category 2 is conducted by personnel qualified to assess information provided by the contractor in terms of delivery probability. They may be assisted by industrial specialists or other technically qualified personnel who will visit the production facility when there is probability of failure by the contractor to deliver or perform according to schedule, or when contractor furnished information is questionable, or on other occasions when the assistance of technical personnel may contribute to the avoidance or minimizing of a delinquency. This category of surveillance entails, as a minimum, a written or telephonic reminder to the contractor in advance of the required delivery or performance date(s) including inquiry as to whether he will perform on schedule or as to the cause and duration of any anticipated delay, and periodic followup and expediting of supplies or services not delivered or performed on time. This category is adaptable to contracts which warrant surveillance effort by the Government in advance of the required due date. Any contract with a Criticality Designator A not assigned to Category 1 shall be assigned to Category 2. All Criticality Designator B contracts and those Criticality Designator C contracts placed with contractors having a history of generally poor production performance also shall be assigned to this category.

Category 3 is conducted by the same personnel assigned Category 2 contracts. This category of surveillance entails inquiry and expediting effort after a failure to deliver or perform within the contract schedule has occurred, and periodic followup. It may involve assistance by technical personnel.

(b) Regardless of assigned category, if a contract is reported by DD Form 375, Production Progress Report, as delinquent or anticipated to become delinquent, the surveillance efforts will provide continuous knowledge of the status of the problems causing the delinquency and of the corrective efforts being taken.

25-104.4 *Initial Contract Review.* If Category 1 is assigned to a contract, the contract administration service office shall:

(a) review the contract in conjunction with any pre-award survey (see 1-900) to ascertain what contract performance difficulties may be expected;

(b) determine the extent of post-award orientation required in the production area (see Section I, Part 18); and

(c) determine any special procedures to be followed.

25-105 Production Surveillance Techniques. The contract administration office may, in conducting its surveillance program, employ any of the commonly known production surveillance techniques (*e.g.*, Program Evaluation Review Technique (PERT), Line of Balance (LOB)), although maximum use shall be made of any reliable production control system established by the contractor. However, notwithstanding any contractor system, the contract administration office has full responsibility for maintaining the level of surveillance established under 25-104.

PRODUCTION SURVEILLANCE AND REPORTING

Part 2—Production Reporting

25-201 General. The purpose of production reporting is to provide the Government with information on the status of contract performance or deliveries.

25-202 Production Progress Reporting by Contractors.

(a) When production progress reporting is to be required, the clause in 7-104.51 shall be included in the contract.

(b) Reports shall be made on DD Form 375, Production Progress Reports, or any other form approved by the Office of Management and Budget under the Federal Reports Act of 1942 (P.L. 77-831). Automatic data processing equipment printouts may be substituted for the DD Form 375 provided they contain identical data. Automatic data processing cards or tape or electrical transmissions which contain the data normally contained in these reports may be authorized in lieu of the printed form. Contract schedule provisions supporting the clause referenced in (a) above shall contain but not be limited to instructions relative to (i) the frequency and timing (normally five workdays after each reporting period) of reporting; (ii) the contract line items, exhibits, or exhibit line items for which reporting is required; (iii) offices and mailing addresses to which reports shall be sent, including the purchasing office, the contract administration office (three copies), status control activities and inventory managers, if appropriate; and (iv) special requirements as to codes and formats. When reporting an actual or potential delinquency, the contractor prepared DD Form 375c shall, as a minimum, contain the following data:

- (i) *Problem*—a statement of the difficulty, the reasons therefor and whether caused by the Government or the contractor;
- (ii) items and quantities affected;
- (iii) date of commencement of the anticipated or actual delinquency;
- (iv) action taken by the contractor to overcome the anticipated or actual delinquency;
- (v) estimated recovery date based upon evaluation of the factors contributing to the delinquency; and
- (vi) a realistic schedule revision which can be met by the contractor.

In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

(c) If the contract is assigned for contract administration, the contract administration office shall take appropriate action to enforce contract production reporting requirements. The accuracy of contractor-prepared reports shall be verified by either (i) a program of continuous surveillance over the contractor's system for preparation of the reports, or (ii) by individual review of each report.

(d) If the contractor's report indicates that the contract schedule will be met and the contract administration office concurs, no further report by the contract administration office is required. If, on the other hand, either (i) the contractor forecasts a delivery or performance failure, or (ii) the contract administration office does not concur in the contractor's no-failure report, and in either case (A) the delay is expected to be for more than 30 days, or (B) purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within four working days after receipt of the contractor's report. The endorsement shall include:

(i) comments as to nonconcurrence, if applicable;

(ii) *Action Taken*—by the contractor and by the Government to overcome the anticipated or actual delinquency;

(iii) *Action Required*—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

25-203 Delinquency Reports Initiated by Contract Administration Offices. The contract administration office may, at any time, and, at its option, advise the purchasing office or, if so identified in the contract, the inventory manager, of any potential or actual delay in performance or delivery. Advice may be furnished by use of:

(i) DD Form 375-2, Delay in Delivery (Flash Notices); or

(ii) DD Form 375, Production Progress Report and DD Form 375c (continuation); or

(iii) message; or

(iv) letter.

25-204 Special Production Progress Reports. When the purchasing office requires a report or information not covered by 25-202 or 25-203 (*e.g.*, advice of shipment or delay in delivery), it shall request the contract administration office to supply the information, specifying the contract number, contractor and location. Requests shall be kept to a minimum. The contract administration office shall furnish the information from its files or, if necessary, by making special surveillance inquiries or visits.

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SECTION XXVI
CONTRACT MODIFICATIONS

26-000 Scope of Section.

(a) This Section prescribes the policy and procedures for preparing and processing:

(i) modifications to contracts, including letter contracts; and

(ii) novation and change of name agreements.

(b) This Section does not include procedures relating to:

(i) modifications to DD Form 1155, Order for Supplies or Services / Request for Quotations (see 3-608.4);

(ii) order for supplies or services not otherwise changing the terms of contract or agreements (*e.g.*, delivery orders under indefinite delivery type contracts;

(iii) modifications for extraordinary contractual relief (see Section XVII); or

(iv) modifications to construction or architect-engineer contracts (see 16-405.4).

CONTRACT MODIFICATIONS

Part 1—General

26-101 Policy.

(a) Contract modifications, which are defined in 1-201.2, shall be effected only by the use of Standard Form 30, Amendment of Solicitation / Modification of Contract (see 16-103). Contract modifications are of five general types:

(i) administrative changes (These changes, such as a change in paying office and appropriation data, do not affect the substantive rights of the contracting parties and do not require the contractor's acceptance.),

(ii) change orders (see Part 2),

(iii) supplemental agreements (see Part 3),

(iv) orders for provisioned items (see 4-300); and

(v) terminations for convenience and for default (see Part 7).

(b) Policy regarding the pricing of contract modifications, including changes which could be issued unilaterally, is as follows:

(i) *Contracts, Other Than For Major Defense Systems.* The price of contract modifications shall be negotiated prior to their execution if this can be done without adversely affecting the interests of the Government. If a significant cost increase could result from a modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless to do so would be impractical.

(ii) *Major Defense Systems Contracts.* When modifications are necessary to major defense systems contracts, either a final price or an established ceiling shall be negotiated prior to execution, unless to do so would be patently impractical.

(c) Only contracting officers, as defined in 1-201.3, acting within the scope of their authority are empowered to execute modifications on behalf of the Government. Other Government personnel shall not:

(i) execute modifications,

(ii) act in such a manner as to cause the contractor to believe that they have authority to bind the Government, or

(iii) direct or encourage the contractor to perform work which should be the subject of a modification.

26-102 Availability of Funds. A contract modification involving an increase in funds shall not be executed until a certification of fund availability has been obtained by the contracting officer. When a modification is issued prior to agreement as to price adjustment, the certification shall be made on the best available estimate of cost. Exceptions are:

(i) contracts conditioned upon the availability of funds (see 1-318), and

(ii) contracts which contain an incremental funding clause (see 1-2001, 7-203.3(b), and 7-402.2(c) and (d).

26-103 Release of Excess Funds.

(a) It is the policy of the Department of Defense that unexpended dollar balances determined to be excess to known contractual requirements shall be released promptly. Contracting officers shall monitor contract fund status and take action to reduce the dollar balance of contracts when determined to be in excess of the amounts necessary for payment of outstanding contract requirements.

(b) To accomplish such determination, consultation with contractors and coordination between contracting offices and CAOs may be required to properly establish funding levels. A determination may be based upon, but it not limited to: (i) contractually required funding reports; (ii) fund status reviews; (iii) advice from the contractor; (iv) advice from the buying office, CAO or DCAA; (v) examination of vouchers or invoices; and (vi) a review of contract progress. Upon a determination of excess funds, contracting officers shall take appropriate action to assure such funds are removed from contracts as expeditiously as possible. For release of funds excess to a termination claim see 8-206.2.

26-104 Effect of Modification on Contract Funds. Each modification shall clearly state the impact on each affected accounting classification (Block No. 10) and on the total contract price (Block No. 12) in accordance with 16-104.4.

26-105 Identification of FMS Contract Modifications. If the modification adds FMS requirements, identify the modification by clearly stamping or otherwise indicating the "*FMS Requirement*" on the face of the modification and specify within the modification each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA, for such added FMS items.

BEST DOCUMENT AVAILABLE

CONTRACT MODIFICATIONS

Part 2—Change Orders

26-200 Scope of Part. This Part sets forth the policy and procedures governing the issuance, processing and adjusting of change orders:

(i) pursuant to the Changes clause of the contract, and

(ii) pursuant to other clauses of the contract invoking the Changes clause procedures.

26-201 General. Fair and economical processing of change orders does not occur automatically merely by issuance of an authorized change order. Procedures are necessary to:

(i) establish the authority of the Government to request a contractor to originate a change or to evaluate a Government proposed change;

(ii) promote the policy of forward pricing of changes when feasible;

(iii) require the contractor to submit and to certify cost or pricing data in support of his equitable adjustment;

(iv) provide that contractor-originated changes of less than a specified magnitude may be made without price adjustment;

(v) provide for recording of and accounting for segregable direct costs of changed work in support of equitable adjustment claims; and

(vi) equitably adjust the contract in a single, final and complete supplemental agreement.

26-202 Originating Engineering Change Proposals (ECP's).

(a) Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change; to evaluate the technical, cost and schedule effects of implementing the change; and to price the change in advance when possible. The clause in 7-104.89 may be used to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(b) The clause in 7-104.89 includes a sample of an optional paragraph (c) supplementing the basic clause to discourage a large number of small-dollar contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

26-203 Change Order Accounting Procedures.

(a) As stated in 26-101(b), forward pricing of change orders is to be accomplished whenever feasible. However, where retroactive pricing is the only practicable alternative, it can be effected more accurately if the Government has complete and accurate information disclosing a contractor's costs incurred in performing the changes. Recording change order costs is a difficult and complex task with respect to certain aspects of work and cost; hence contractors' accounting systems seldom segregate the costs of performing changed work as such. Accordingly, before submission of bids or offers, prospective contractors should be advised of the possible need to alter or to improve their accounting procedures to be able to comply with the 7-104.90 clause. The 7-104.90 clause provides for change order cost segregation.

(b) It is not possible to enumerate all categories of costs attributable to a change order because such costs vary according to the particular contract and the contractor's accounting system. Certain categories of costs are less susceptible of accounting segregation than others. Nevertheless, the following categories of direct costs normally are segregable and accountable under the terms of the 7–104.90 clause:

(i) non-recurring costs; *e.g.*, engineering costs, and costs of obsolete work or reperformed work;

(ii) costs of added distinct work; *e.g.*, new sub-contract work, or new prototypes, or new retrofit or backfit kits caused by the change order; and

(iii) costs of recurring work; *e.g.*, labor and material costs.

26–204 Complete and Final Equitable Adjustments.

(a) Controversies sometimes arise in interpreting what the parties to a contract intended to include within the scope and terms of the supplemental agreement equitably adjusting changes. To assure that equitable adjustments are complete, contractors should make every reasonable effort to present to the Government all elements of adjustment arising out of the change order to which the equitable adjustment pertains. Supplemental agreements containing a release of claims should be made only after all such elements of adjustment have been presented and considered.

(b) The following is a sample release for use in supplemental agreements:

RELEASE OF CLAIMS

In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's ....(*describe*).................................claims, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the aforesaid claims (except for: ....)

26–205 Use of Clauses.

(a) The clauses in 7–104.89 and 7–104.90 are sample clauses authorized for use in any research and development or supply contract. Further, the clause in 7–104.89 may be used either by itself or by incorporation in a provision invoking MIL-STD-480 to obtain engineering change information.

(b) The clause in 7–104.90 and the paragraph (c) to supplement the clause in 7–104.89 are examples of clauses authorized for use in contracts of significant technical complexity when numerous changes are anticipated.

26–206 Change Order Administration Procedures.

26–206.1 *Change Order Documentation.* When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (*e.g.*, an optional clause) initially require only one document, the change order.

26–206.2 *Authority to Issue Change Orders.* Change orders shall be issued by the PCO except when delegated to the ACO in accordance with 1–406 or 20–703.3(b).

26–206.3 *Preparation of Change Order.* All change orders shall be prepared on Standard Form 30, Amendment of Solicitation/Modification of Contract, in accordance with 16–104.4. All applicable items on the form shall be completed. However, the estimated change in contract price shall not be shown on copies of the Standard Form 30 furnished to the contractor.

26–206.4 *Issuance of Urgent Change Orders.* Under unusual or urgent circumstances, the PCO may order changes by written electrical transmission *provided* that:

(i) the ACO is furnished a copy of the transmission;

(ii) immediate action is taken to confirm the change by issuance Standard Form 30; and

(iii) the transmission contains substantially the information required by 26–206.4 (except that the estimated change in price shall not be indicated), including in the body of the transmission the statement, "Signed by (*Name*), Contracting Officer." The original copy, from which the transmission is made, shall be manually signed by the indicated contracting officer.

26–206.5 *Correction or Revision.* Upon receiving a copy of the change order from the PCO, the ACO shall review it to assure that its provisions are compatible with the status of performance. For example, if the contractor has progressed beyond the effective point specified in the change order, the ACO shall determine the earliest practical point at which the change order could be made effective and advise the PCO accordingly. Correction, revision or supersession of a change order shall be made by issuing another change order. The definitizing supplemental agreement shall cite both change orders.

26–206.6 *Follow-up of Contractor Proposals.* When a change order is not forward priced, equitable adjustments resulting from change orders shall be negotiated in the shortest practicable time. The purchasing or contract administration office, as appropriate, shall establish a suspense system which shall identify the outstanding unpriced change orders.

26–206.7 *Analysis of Proposals.* Upon receipt of the contractor's proposal, the ACO shall assure that a cost analysis, if appropriate, is conducted in accordance with 3–807.2(c) and consider the contractor's segregable direct costs of the change, where available. The ACO shall send the PCO a copy of the contractor's proposal marked to indicate whether a cost analysis will be conducted and the anticipated completion date.

26–206.8 *Responsibility for Negotiation of Equitable Adjustments.*

(a) Except for those change orders assigned to the ACO under 26–206.2, the PCO shall be responsible for negotiating all equitable adjustments resulting from change orders, including the execution of supplemental agreements in Standard Form 30, Amendment of Solicitation/Modification of Contract. The ACO shall forward to the PCO the contractor's proposal, together with an analysis thereof. Except at the specific request of the PCO, the analysis shall not include the negotiation of any element of the contractor's proposal, although obvious mistakes may be called to the contractor's attention. Differences between the contractor's proposal and the results of the analysis made by the contract administration office shall be called to the attention of the PCO.

(b) When the negotiation of change orders has been delegated to the ACO, he shall obtain through the purchasing office any additional funds which may be required and shall secure the concurrence of the PCO prior to making any adjustment in the contract delivery schedule as a result of the change.

CONTRACT MODIFICATIONS

Part 3—Supplemental Agreements

26–301 Use. Supplemental agreements are used:

(i) to reflect the agreement reached in the negotiation of change orders;

(ii) in preference to a change order when a supplemental agreement is considered feasible, even though authority exists to accomplish the modification by change order;

(iii) to definitize letter contracts (see 3–408(e));

(iv) to reflect other agreements of the parties modifying the terms of contract; and

(v) to definitize provisioned items orders (see 4–300).

26–302 Preparation of Supplemental Agreements. All supplemental agreements shall be prepared on Standard Form 30, Amendment of Solicitation/Modification of Contract, in accordance with 16–104.4. When a supplemental agreement changes the unit price or unit quantity, information reflecting the changed conditions shall be shown in the format contained in Standard Form 36, Continuation Sheet, unless this form has been used as an attachment to Standard Form 30.

Part 4—Novation Agreements and Change of Name Agreements

26–400 Scope of Part. This Part prescribes the policy and procedures for (i) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or such part of his assets as is involved in the performance of the contracts, (ii) a change of name of a contractor, (iii) execution of novation agreements and change of name agreements by the cognizant Administrative Contracting Officer (ACO) (see definition below), and (iv) entering into novation agreements and change of name agreements on behalf of the National Aeronautics and Space Administration (NASA).

26–401 General.

(a) *Definition of Cognizant ACO.* The cognizant ACO is the ACO administering DoD contracts held by the transferor. When the transferor has multiple plants or divisions, the ACO responsible for the corporate office is the cognizant ACO. When purchasing offices retain responsibility for administration of all contracts of the transferor, the Department having the largest unsettled (unbilled plus billed but unpaid) dollar balance is responsible for executing or designating the office to execute novation and change of name agreements. In the event there is more than one transferor, the cognizant ACO of the CAS component having the largest unsettled dollar balance is responsible for executing novation and change of name agreements.

(b) *Legal Review.* All novation agreements and change of name agreements, prior to execution, shall be reviewed by Government Counsel for legal sufficiency.

26–402 Agreement To Recognize a Successor in Interest.

(a) The transfer of a Government contract is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest arises out of the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

(i) sale of such assets;
(ii) transfer of such assets pursuant to merger or consolidation of corporation; and
(iii) incorporation of a proprietorship or partnership.

(b) When a contractor requests that the Government recognize a successor in interest, the contractor shall be required to provide three signed copies of the novation agreement to the cognizant ACO (see 26–401(a)) together with one copy of each of the following, as applicable:

(i) a properly authenticated copy of the instrument by which the transfer of assets was effected, as for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;
(ii) a list of all contracts and purchase orders, tabulated by service and purchasing office within each service, which have not been finally settled among all Departments concerned and the transferor, and all elements of NASA concerned and the transferor, showing the con-

tract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

(iii) a certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(iv) a certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(v) a properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(vi) opinion of counsel for the transferor and transferee that the transfer was properly effected in accordance with applicable law and the effective date of transfer;

(vii) evidence of the capability of the transferee to perform the contracts;

(viii) balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets;

(ix) evidence of security clearance requirements; and

(x) consent of sureties on all contracts listed under (ii) above where bonds are required, or a statement that none is required.

(c) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the cognizant ACO shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(i) the transferee assumes all the transferor's obligations under the contract;

(ii) the transferor waives all rights under the contract as against the Government;

(iii) the transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted in lieu of such guarantee); and

(iv) nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law.

A form for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth herein. This form may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

AGREEMENT

This AGREEMENT, entered into as of (*date upon which the transfer of assets became effective pursuant to applicable State law*) 19—, by and between the ABC CORPORATION, a corporation duly organized and existing under the laws of the State of ________ with its principal office in the City of ________ (hereinafter referred to as the "Transferor"); the XYZ CORPORATION *add if appropriate* (formerly known as the LMN CORPORATION), a corporation duly organized and existing under the laws of the State of ________ with its principal office in the City of ________ (hereinafter referred to as the "Transferee"); and the UNITED STATES OF AMERICA (hereinafter referred to as the "Government").

WITNESSETH:

26-402

CONTRACT MODIFICATIONS

1. WHEREAS, the Government, represented by various Contracting Officers of the Department of Defense and the National Aeronautics and Space Administration, has entered into certain contracts and purchase orders with the Transferor, [namely: ....] or as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference; and the term "the contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, heretofore made between the Government, represented by various Contracting Officers of the above named Department or NASA, and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties or obligations thereunder), and including modifications thereto hereafter made in accordance with the terms and conditions of such contracts and purchase orders between the Government and the Transferee:

2. WHEREAS, as of ...., 19—, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a [*term descriptive of the legal transaction involved*] between the Transferor and the Transferee;

3. WHEREAS, the Transferee, by virtue of said assignment, conveyance and transfer, has acquired all the assets of the Transferor;

4. WHEREAS, by virtue of said assignment, conveyance and transfer, the Transferee has assumed all the duties, obligations and liabilities of the Transferor under the Contracts;

5. WHEREAS, the Transferee is in a position fully to perform the Contracts, and such duties and obligations as may exist under the Contracts;

6. WHEREAS, it is consistent with the Government's interest to recognize the Transferee as the successor party to the Contracts;

7. WHEREAS, there has been filed with the Government evidence of said assignment, conveyance or transfer, as required by ASPR 26–402(b);

[*Where a change of name is also involved, such as prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:*

8. WHEREAS, there has been filed with the Government a certificate dated ...., 19—, signed by the Secretary of State of the State of ...., to the effect that the corporate name of LMN CORPORATION was changed to XYZ CORPORATION on .... 19............);

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

9. The Transferor hereby confirms said assignment, conveyance and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the Contracts.

10. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the Contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the Contracts, in all respects as if the Transferee were the original party to the Contracts.

11. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Contracts with the same force and effect as if the action had been taken by the Transferee.

12. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the Contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the Contracts in all respects as if the Transferee were the original party to the Contracts. The term "Contractor" as used in the Contracts shall be deemed to refer to the Transferee rather than to the Transferor.

13. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

14. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government, pursuant to its obligations under any of the Contracts, shall be deemed to have discharged *pro tanto* the Government's obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete

discharge of the Government's obligations under the Contracts, to the extent of the amounts so paid or reimbursed.

15. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (i) said assignment, conveyance and transfer, or (ii) this Agreement, other than those which the Government, in the absence of said assignment, conveyance and transfer, or this Agreement, would have been obligated to pay or reimburse under the terms of the Contracts.

16. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (i) assumes under this Agreement, or (ii) may hereafter undertake under the Contracts as they may hereafter be amended or modified in accordance with the terms and conditions thereof; and the Transferor hereby waives notice of and consents to any such amendment or modification.

17. Except as herein modified, the Contracts shall remain in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By..
Title...
ABC CORPORATION
(CORPORATE SEAL)
By..
Title...
XYZ CORPORATION
(CORPORATE SEAL)
By..
Title...

CERTIFICATE

I, ..., certify that I am the Secretary of ABC CORPORATION, named above; that ...., who signed this Agreement on behalf of said corporation, was then .... of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this .... day of ...., 19..........

Corporate Seal)

By........................

CERTIFICATE

I, ..., certify that I am the Secretary of XYZ CORPORATION, named above; that ...., who signed this Agreement on behalf of said corporation, was then .... of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of said corporation this .... day of ...., 19..........

(Corporate Seal)

By............................

(End of Agreement)

26–403 Agreement To Recognize Change of Name of Contractor.

(a) When only a change of name is involved, so that the rights and obligations of the parties remain unaffected, an agreement shall be executed by the cognizant (ACO) (see 26–401(a)) and the contractor modifying all existing contracts between the parties so as to reflect the contractor's change of name. Three signed copies of the Change of Name Agreement and one copy of each of the following shall be forwarded by the contractor to the cognizant ACO:

(i) a copy of the instrument by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(ii) opinion of counsel for the contractor as to the effective date of the change of name and that it was properly effected in accordance with applicable law; and

(iii) a list of all contracts and purchase orders which have not been finally settled among all Departments concerned and the transferor, and all elements of NASA concerned and the transferor showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, and the balance remaining unpaid.

(b) A format for such an agreement which shall be adapted for specific cases is set forth below.

AGREEMENT

THIS AGREEMENT, entered into as of *(date upon which the change of name became effective pursuant to applicable State law)* ...., 19.......... by and between the ABC CORPORATION (formerly the XYZ CORPORATION and hereinafter sometimes referred to as the "Contractor"), a corporation duly organized and existing under the laws of the State of ...., and the UNITED STATES OF AMERICA (hereinafter referred to as the "Government").

WITNESSETH:

1. WHEREAS, the Government, represented by various Contracting Officers of the Department of Defense and the National Aeronautics and Space Administration, has entered into certain contracts and purchase orders with the XYZ CORPORATION, [namely:.................] *or* [as set forth in the attached list marked "Exhibit A" to this agreement and herein incorporated by reference;] and the term "the Contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, entered into between the Government, represented by various Contracting Officers of the Department of Defense, or NASA and the Contractor (whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder);

2. WHEREAS, the XYZ CORPORATION, by an amendment to its certificate of incorporation, dated ...., has changed its corporate name to ABC CORPORATION;

3. WHEREAS, a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government and of the Contractor under the Contracts are unaffected by said change; and

4. WHEREAS, there has been filed with the Government documentary evidence of said change in corporate name;

NOW THEREFORE, in consideration of the premises, the parties hereto agree that the Contracts covered by this agreement are hereby amended by deleting therefrom the name "XYZ CORPORATION" wherever it appears in the Contracts and substituting therefor the name "ABC CORPORATION."

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By..
Title..
ABC CORPORATION
(Corporate Seal)
By..
Title..

CERTIFICATE

I, ..., certify that I am the Secretary of ABC CORPORATION, named above; that .... who signed this Agreement on behalf of said corporation, was

26–403

then .... of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this .... day of ...., 19........
(Corporate Seal)

By...............................

(End of Agreement)

26–404 Processing Novation Agreements and Change of Name Agreements.

(a) The cognizant ACO processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by 26–402(b)(ii), to the Departments and Defense agencies and NASA having contracts with the contractor or contractors concerned. Each list need contain only those contracts issued by purchasing offices of the addressee. Such notice shall be transmitted to the appropriate addressee listed herein.

Department of the Army
HQ., U. S. Army Materiel Development
and Readiness Command
ATTN: DRCGC-P
5001 Eisenhower Avenue
Alexandria, Virginia 22333

Department of the Navy
Chief of Naval Material
ATTN: MAT 08CD
Washington, D.C. 20360

Hq., U.S. Air Force Systems Command
ATTN: PPPB
Washington, D.C. 20331

Defense Supply Agency
ATTN: DSAH-PPR
Cameron Station
Alexandria, Virginia 22314

National Aeronautics and Space Administration
Assistant Administrator for Procurement
ATTN: HR
Washington, D.C. 20546

Defense Communications Agency
ATTN: Code 260
Washington, D.C. 20305

Director
Defense Nuclear Agency
ATTN: OAPR
Washington, D.C. 20305

Director of Procurement
National Security Agency
Fort Meade, Maryland 20755

Defense Mapping Agency
DMA-LO, Building 56
U. S. Naval Observatory
Washington, D. C. 20305

Defense Civil Preparedness Agency
Washington, D. C. 20301

Within 30 days after receipt of such notice, the Department or NASA may submit comments to the cognizant ACO, which comments shall be considered prior to execution of the proposed agreement. The absence of comment from a Department within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that Department.

(b) Where substantial alterations or additions to the formats set forth in 26-402(c) and 26-403(b) are considered appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the appropriate addressees listed above involved prior to execution. Any objection shall be resolved before the agreement is executed. If, for any reason, NASA indicates a desire to consummate a separate agreement with the contractor, the cognizant ACO shall continue to process the agreement only for the Departments and Defense agencies concerned.

(c) Executed novation agreements or change of name agreements shall be distributed by the cognizant ACO as follows:

(1) The original signed copy shall be retained by the ACO.

(2) The duplicate signed copy shall be forwarded to the contractor.

(3) Two copies of the agreement to the appropriate addressees listed in (a).

(d) After execution and distribution of an agreement, an administrative change (Standard Form 30) shall be prepared by the cognizant ACO incorporating a summary of the agreement and attaching thereto a complete list of contracts affected. (NASA contracts shall not be included in this list since NASA will issue its own administrative change.) A total of two copies of the administrative change, with the list of contracts affected, shall be furnished to the appropriate addressee(s) listed in (a) above. Each list need contain only those contracts issued by purchasing offices of the addressee. In addition, the cognizant ACO shall distribute a single copy of the administrative change (Standard Form 30) to each purchasing office which executed contracts affected by the change of name agreement or novation agreement. A list of the contracts executed by the addressee and affected by the administrative change will be attached to the Standard Form 30. When the ACO responsible for the corporate office is the cognizant

BEST DOCUMENT AVAILABLE

ACO, one copy will be distributed to each CAO responsible for contract administration at a plant or division. The CAO will, in turn, reproduce and distribute copies for each of its affected contracts. Each purchasing office will reproduce the necessary number of copies of the administrative change and will make distribution as determined necessary by that office. Reproduction and distribution of copies for CAOs will be accomplished by the ACO who executed the administrative change.

(e) Novation and change of name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the appropriate Military Traffic Management and Terminal Service area activity set forth below for execution without regard to the provisions of (a), (b) and (d) above.

Commander
Eastern Area
Military Traffic Management and Terminal Service
ATTN: PPS
Brooklyn, New York 11250

Commander
Western Area
Military Traffic Management and Terminal Service
Oakland Army Base
ATTN: PPS
Oakland, California 94626

Part 5—Modifications to Letter Contracts

26-501 General.

(a) Modifications to letter contracts shall be accomplished under the same policies and procedures as those applicable to definitive contracts.

(b) Bilateral modifications (supplemental agreements) issued prior to definitizing a letter contract may be processed in the same manner as the letter contract *i.e.*, the PCO may sign prior to the contractor.

(c) For definitization of letter contracts and modifications thereto, see 3-408(e).

CONTRACT MODIFICATIONS

Part 6—Issuance of Shipping Instructions

26-601 Authority for Issuance. Initial shipping instructions not included in the basic contract and amended shipping instructions shall be issued pursuant to the Changes clause in accordance with 19-204.

26-602 Contract Administration Activities. Contract administration activities shall:

(i) cause release of shipments from contractor's plants according to existing shipping instructions, including shipping instructions furnished in accordance with 19-204(a)(2). When applicable, the order of assigned priority shall be followed; shipments within the same priority shall be determined by date of the instruction.

(ii) obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. ACOs shall review all amended shipping instructions on a periodic, consolidated basis to assure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the PCO for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

CONTRACT MODIFICATIONS

Part 7—Other Modifications

26-700 Scope of Part. Except for construction contracts, this Part sets forth the policy and procedures for modifications authorized by contract provisions other than a Changes clause.

26-701 Use. Modifications within the scope of this Part include those issued pursuant to a contract provision (*e.g.*, provisioning requirements, a Government-Furnished Property clause, an Inspection clause, an Option clause, or a termination clause).

26-702 Preparation.

(a) *General.* When the removal, reinstatement, or addition of funds is involved, modification pursuant to this Part shall contain, in addition to the information specified on Standard Form 30 (*Amendment of Solicitation / Modification of Contract*), the following:

(i) the total dollar amount of funds to be removed from or added to the contract;
(ii) the reason for adjustment;
(iii) the contract items and accounting classifications; and
(iv) a reference to the basis for, or authority to deobligate excess funds.

(b) *Notice of Termination for Convenience of the Government.* SF 30 shall be used as the initial or confirming notice, and shall include the information outlined in 8-801.2, appropriately modified as required. If the termination is partial, the line items and quantities affected by the termination shall be identified to the extent practicable. If the termination is complete, line item identification may be omitted, since the contract is considered to be physically completed upon issuance of a notice of complete termination. (See S2-301.1). The same modification number and effective date shall be assigned to the initial and confirming modification.

(c) *Notice of Termination for Default.* SF 30 shall include all information outlined in 8-602.3(d), including the statement that the modification constitutes a decision of the contracting officer from which the contractor has the right of appeal pursuant to the Disputes clause, if the contracting officer has determined that failure to perform was not excusable. If the notice does not include the decision of the contracting officer, the decision, when made, shall be issued in letter form pursuant to 8-602.3(g).

(d) *Amendment to Termination Notice.* Each amendment to a termination notice, including rescission of the termination, reinstatement of items or quantities previously terminated, or termination of additional items or quantities, shall be issued on SF 30.

(e) *Conversion of Default Termination to Convenience.* If a termination for default is subsequently converted to a termination for convenience of the Government, either by a decision of the contracting officer or by a decision of ASBCA on an appeal filed by the contractor, the converted designation shall be reflected on SF 30. The effective date of the termination for default shall be indicated in the modification as the effective date of the convenience termination.

(f) *Determination of Contracting Officer*. SF 30 shall be used to reflect a determination of the amount due in settlement of a contract terminated for convenience:

(i) in cases where the contractor has lost the right of appeal for failure to submit a timely settlement proposal in accordance with the Termination clause; and

(ii) to confirm the determination, if the contractor does not appeal the decision of the TCO.

SF 30 prepared pursuant to (ii) above shall indicate the same effective date as the letter determination previously issued. Block 12 of the modification may be limited to a reference to the letter determination and a statement of the net amount determined to be due in settlement of the termination. To assure sequential numbering of modifications, a Supplementary Procurement Instrument Identification number shall not be assigned to the letter determination.

(g) *Release/Reinstatement of Funds*. SF 30 shall be used to remove, reinstate or add funds to a contract. (See 26-702(a)).

(h) To facilitate identification, the category of the transaction shall be indicated in Block 11(a) in all Standard Forms 30 issued to reflect modifications (b) through (g) above, as illustrated below:

11. This Block Applies Only to Modification of Contracts/Orders.

(a) ( ) This Unilateral Modification is issued pursuant to .... It modifies the above numbered contract as set forth in Block 12.

CONTRACT MODIFICATIONS

Part 8—Notification of Changes

26-800 General. No unilateral change will be made in the terms and conditions of a contract except for changes identified as such in writing and signed by the contracting officer pursuant to the "Changes" clause or other clause in the contract (see 1-201.1, 26-101 through 26-205). Government representatives shall avoid conduct (written or oral communications, actions and inactions) that could constitute an unauthorized unilateral change in the terms and conditions of a contract. When a contracting officer or other Government representative, by conduct, causes a contractor to perform changed work, such conduct may be the basis for a claim by the contractor. Examples of such Government conduct include: furnishing defective Government specifications; requiring adherence to delivery schedules when a contractor is entitled to a time extension; denying a contractor the opportunity to employ a permissible method or sequence of work; or erroneously requiring a contractor to perform contrary to his correct interpretation of the contract requirements. Government representatives shall act promptly to resolve such situations as soon as they are made known to the Government.

When a contractor considers that the Government has effected or may effect a change in the terms and conditions of the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that he notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and (1) confirm that the Government conduct is a change, direct the mode of further performance and plan for funding of the change, or (2) countermand an alleged change, or (3) notify the contractor that no change is considered to have been effected. The clause in 7-104.86 is designed to accomplish these purposes.

26-801 Procedures.

(a) Only the Procuring Contracting Officer (PCO) is authorized to take the actions prescribed in paragraphs (c) and (d) of the 7-104.86 clause, except when the PCO expressly delegates in writing any or all of such actions to the Administrative Contracting Officer (ACO).

(b) In exceptional cases, the PCO may designate a "specifically authorized representative" to issue directions and interpretations as provided in the clause contained in 7-104.86 when he anticipates that continuity of the contractor's performance for a particular phase or task under a contract is so important that no delay or diminution of performance is acceptable. If such a designation is made, the notice of designation shall: (1) be in writing and furnished promptly to the contractor, the ACO, and the "specifically authorized representative," and (2) clearly prescribe the scope and duration of authority of the "specifically authorized representative," *provided*, however, that such designated authority in no event shall exceed the authority of the PCO. All directions, communications, interpretations, orders and similar conduct of a "specifically authorized representative" shall be reduced to writing as promptly as possible after their occurrence and copies thereof shall be furnished to the contractor and to the PCO and ACO. No notice of designation, however, shall be issued retroactively to confirm directions earlier communicated by a representative of the Government. The

PCO shall promptly countermand any directions of a "specifically authorized representative" which exceed his designated authority. A sample of such a designation is:

> "I, John Doe, Contracting Officer, pursuant to (a)(ii) of the Notification of Changes clause in Contract N000000-71-C-0001 hereby designate Ralph Roe, quality assurance representative resident at the contractor's facility as my representative empowered to communicate directions, interpretations, determinations and orders concerning qualification test specification No. ABCD dated 6 August 1969 during the forthcoming qualification testing of the XYZ weapon system between 29 November and 4 December 1973."

26-802 Use of Notification of Changes clause. The clause set forth in 7-104.86 is available for use primarily in negotiated research and development or supply contracts for the procurement of major weapon systems or principal subsystems. Although the clause generally would not be used in contracts of less than $1,000,000 it may be used when the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

APPENDIX A

ARMED SERVICES BOARD OF CONTRACT APPEALS

Approved 1 May 1962
Revised 1 May 1969
Revised 1 September 1973
Revised 1 July 1979

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sect. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate

the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice- chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involving $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board,

unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in Section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that Section.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for

the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is *effective April 21, 1980.*

APPROVED:

W. GRAHAM CLAYTOR, JR.
Deputy Secretary of Defense

CLIFFORD L. ALEXANDER, JR.
Secretary of the Army

E. HIDALGO
Secretary of the Navy

HANS M. MARK
Secretary of the Air Force

ARMED SERVICES BOARD OF CONTRACT APPEALS

Part 2—Rules

Approved 15 July 1963
Revised 1 May 1969
Revised 1 September 1973
Revised 30 June 1980

PREFACE

I. JURISDICTION FOR CONSIDERING APPEALS

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. LOCATION AND ORGANIZATION OF THE BOARD

(a) The Board's address is Hoffman Building #2, 200 Stovall Street, Alexandria, Virginia 22332, telephone (202) 325-9070.

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board.

Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see Rules 12.2(c) and 12.3(b).

PRELIMINARY PROCEDURES

1. Appeals, How Taken

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer* - Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) the decision from which the appeal is taken;

(2) the contract, including pertinent specifications, amendments, plans and drawings;

(3) all correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant* - Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File* - Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents* - Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File* - Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. Motions

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. Pleadings

(a) *Appellant* - Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government* - Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. Hearing Election

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. Prehearing or Presubmission Conference

(a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) simplification, clarification, or severing of the issues;

(2) the possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) agreements and rulings to facilitate discovery;

(4) limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) the possibility of agreement disposing of any or all of the issues in dispute; and

(6) such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereafter constitute a part of the record.

11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

These procedures are available solely at the election of the appellant.

12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 The ACCELERATED Procedure

(a) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 Motions for Reconsideration in Rule 12 Cases

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. Settling the Record

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. Discovery - Depositions

(a) *General Policy and Protective Orders* - The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted* - After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions* - The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence* - No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses* - Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas* - Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. Service of Papers Other Than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

HEARINGS

17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. Hearings: Nature, Examination of Witnesses

(a) *Nature of Hearings* - Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses* - Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. Subpoenas

(a) *General* - Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) testimony at a deposition - the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) testimony at a hearing - the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) production of books and papers - in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation* - Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas* -

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify* - Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance* -

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service* -

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena* - In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. Post-Hearing Briefs

Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. Withdrawal of Exhibits

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

26. The Appellant

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

DECISIONS

28. Decisions

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

MOTION FOR RECONSIDERATION

29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

SUSPENSIONS, DISMISSALS AND DEFAULTS: REMANDS

30. Suspensions; Dismissal Without Prejudice

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. Dismissal or Default for Failure to Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. Remand from Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

TIME, COMPUTATION AND EXTENSIONS

33. Time, Computation and Extensions

(a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

EX PARTE COMMUNICATIONS

34. Ex parte Communications

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

35. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

36. Effective Date

These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

DAC #76-28 15 JULY 1981

ARMED SERVICES BOARD OF CONTRACT APPEALS

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) WILLIAM J. PERRY (30 JUN 1980)
UNDER SECRETARY OF DEFENSE FOR
RESEARCH AND ENGINEERING

(signed) PERCY A. PIERRE
ASSISTANT SECRETARY OF THE ARMY
(RESEARCH, DEVELOPMENT AND
ACQUISITION)

(signed) J. A. DOYLE
ASSISTANT SECRETARY OF THE NAVY
(MANPOWER, RESERVE AFFAIRS AND
LOGISTICS)

(signed) EUGENE H. KOPF
(ACTING) ASSISTANT SECRETARY OF THE AIR FORCE
(RESEARCH, DEVELOPMENT AND
LOGISTICS)

APPENDIX B—GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

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APPENDIX B

GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

Part 1—Introduction

B-100 Scope of Appendix. This Appendix sets forth the basic requirements to be observed by contractors in establishing and maintaining control over Government property provided pursuant to the terms of contracts with the Departments (see 1-201.5). To the extent of any inconsistency between this Appendix and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

B-101 General. The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system (in accordance with the provisions of this Appendix) to control, protect, preserve and maintain all Government property. The contractor's property control system shall be in writing unless the property administrator determines that maintenance of a written system is unnecessary (see S3-302.1). This system shall be reviewed and, if satisfactory, approved in writing by the assigned property administrator. The contractor shall maintain and make available such records as are required by Part 3 of this Appendix and must account for all Government property until relieved of responsibility therefor in accordance with procedures set forth in Part 2 of this Appendix. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data to substantiate any request for discharge from responsibility.

(a) The contractor shall require any of his subcontractors who are provided Government property under the prime contract to comply with the provisions of this Appendix. Procedures for assuring subcontractor compliance shall be included in the contractor's approved property control system. In those instances where the property administrator assigned to the contract has requested supporting property administration, the contractor may accept the system approval and continuing surveillance of the supporting property administrator in lieu of performing duplicative actions to assure the subcontractor's compliance with the provisions of this Appendix.

(b) In the event any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, any necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control and corrective action is not reached between the contractor and the property administrator, the matter will be referred tc the administrative contracting officer.

(c) When Government property (excluding misdirected shipments) is disclosed to be in the possession or control of the contractor but not provided in accordance with the provisions of any contract, the contractor will, as promptly as possible, (i) record such property according to the established property control procedure, and (ii) furnish to the property administrator all known circumstances and factual data pertaining to its receipt and a statement as to whether there is a need for retention of such property. For misdirected shipments, see B–313.

(d) The contractor shall report all Government property in excess of the amounts needed to complete full performance under the contract pursuant to which it was provided, or other existing contracts which authorize the use of such property, as promptly as possible after disclosure of the condition.

B–102 Definitions. As used in this Appendix:

B–102.1 *Property Administrator* means the individual duly designated by appropriate authority to administer the contract requirements and obligations relative to Government property. He is an authorized representative of the contracting officer.

B–102.2 *Government Property* means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(i) *Government-furnished property* is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(ii) *Contractor-acquired property* is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government (but see B–201(c)).

B–102.3 *Provide*, as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

B–102.4 *Government Material* means Government property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies.

B–102.5 *Special Tooling* means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) consumable property;

(ii) special test equipment; or

(iii) buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

B-102.6 *Special Test Equipment* means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment, that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "*special test equipment*" does not include:

(i) material;
(ii) special tooling;
(iii) buildings and nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment); and
(iv) plant equipment items used for general plant testing purposes.

B-102.7 *Facilities* means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

B-102.8 *Real Property*, for purposes of accounting classification, means (i) land and rights therein, (ii) ground improvements, (iii) utility distribution systems, (iv) buildings, and (v) structures. It excludes foundations and other work necessary for the installation of special tooling, special test equipment and plant equipment.

B-102.9 *Utility Distribution System* means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system) by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between (i) the outside of the building or structure in which the services are used, and (ii) the point of origin or disposal, or the connection with some other system. For the purpose of this Appendix, it does not include communication services.

B-102.10 *Plant Equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

B-102.11 *Industrial Plant Equipment* (*IPE*) is that part of plant equipment with an acquisition cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations; and IPE is further identified by noun name in Joint DoD Handbooks |

B-102.12 *Other Plant Equipment* (*OPE*) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations; but excluding items categorized as IPE.

BEST DOCUMENT AVAILABLE

B–102.13 *Accessory Item* means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

B–102.14 *Auxiliary Item* means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

B–102.15 *Salvage* means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

B–102.16 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

B–102.17 *Custodial Records* means written memoranda or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

B–102.18 *Individual Item Record* means a separate card form, or document utilized to account for one item of property.

B–102.19 *Stock Record* means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

B–102.20 *Discrepancies Incident to Shipment* means all deficiencies incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to loss, damage, destruction, improper status and condition coding, error in identity or classification, and improper consignment.

B–102.21 *Military Property* means Government-owned personal property designed for military operations. It includes end-items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item. It does not include Government material, special test equipment, special tooling or facilities.

B–102.22 *Work-in-Process* for the purpose of financial reporting means material (See B–102.4) which has been released to the production element.

B–103 Segregation or Commingling of Government Property and Contractor's Property. Government property will be segregated and kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled:

(a) when the Government property is special tooling, special test equipment or plant equipment which is clearly identified and recorded as Government property;

(b) when approved by the property administrator in connection with research and development contracts;

(c) when material is included in a multicontract cost and material control system approved in accordance with B–303(e)(ii);

(d) when (i) scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable,

(ii) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (iii) Government contracts involved are fixed-price in nature and provide for the retention of the scrap by the contractor; or

(e) when otherwise approved by the property administrator.

B-104 Audit of Property Control System. The contractor's Government property control system shall be audited by the Government as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter, during the period the contractor is required to retain such records. The contractor shall make all such records, including correspondence related thereto, available to the auditors.

B-105 Administration of Military Property. Due to the special nature of military property, the contract under which it is provided generally will contain specific requirements for maintenance and control. Moreover, the following conditions shall be observed: (i) each item of the property shall be identified by its Federal item identification number and Government nomenclature; and (ii) upon the completion or termination of the contract, the contractor shall request and comply with disposition instructions from the contracting officer. To the extent specified in the contract, provisions of this Appendix shall apply to military property.

GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

Part 2—Contractor's Responsibility

B-200 Scope of Part. This Part covers to the extent not otherwise provided in the contract, (i) the duties and responsibilities of the contractor with respect to Government property, (ii) the obligations of the contractor with respect to the control of Government property, both physically and administratively, and (iii) the liability of the contractor for Government property lost, damaged, destroyed, or for which the contractor is otherwise unable to account.

B-201 Assumption of Responsibility. A contractor shall be responsible for all Government property in his possession or control in accordance with the terms of the contract including property provided under such contract which may be in the possession or control of a subcontractor. Sources from which Government property may be furnished or acquired are as follows:

(a) *Military Installations or Other Contractor's Plants.* Government property may be shipped to a contractor from military installations, other Government installations, or plants of Military Departments or other Government Agency contractors. For the purpose of this Appendix, the contractor shall become responsible for such property upon delivery of the property into his custody or control. The shipping activity shall furnish the contractor with copies of documents necessary to permit the contractor's property records to accurately reflect the transaction.

(b) *Direct Purchase by the Contractor.* Direct purchases shall be subject to a determination by the administrative contracting officer (ACO) that the items are allocable to the contract involved and are reasonably necessary. In the case of purchase authorization of IPE, such authorization shall include a citation of a DIPEC certificate of nonavailability number including a date by which the IPE must be purchased by the contractor. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired (see B-306.1, C-306.1, and F-200.1342). Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. For purposes of property control within the scope of this Appendix, it shall be considered that property purchased by the contractor, for which reimbursement is to be requested, becomes Government property upon its receipt by the contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

(c) *Withdrawal From Contractor-Owned Stores.* For purposes of property control, within the scope of this Appendix, property withdrawn from contractor-owned stores, for direct charge to the contract, shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

(d) *Contract Provisions, Terminations, Contract Changes*. Pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property. For purposes of property control, such property shall, unless otherwise provided by the contract, be considered Government property upon acceptance of title by the Government.

(e) *Advance, Progress, or Partial Payments*. Pursuant to the terms of a contract, the Government may acquire a lien or title to property upon the making of advance, progress, or partial payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the provisions of this Appendix.

B–201.1 *Evidence of Receipt of Government Property*. The contractor shall furnish written receipts for all, or specific classes of Government-provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. Where such evidence of receipt is required for contractor-acquired property, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher) for the property. In the instance of Government-furnished property, the required receipt shall be provided by the contractor immediately upon receipt of the property.

B–201.2 *Discrepancies Incident to Shipment*.

(a) *Government-Furnished Property*. When overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and the apparent causes in accordance with procedures approved by the property administrator pursuant to B–101. When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the shipping document, only that quantity, or property, actually received will be recorded on the official records of the contractor.

(b) *Contractor-Acquired Property*. The contractor shall take all actions necessary in adjustment of overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier except in those instances wherein the shipment has moved via Government bill of lading and carrier liability is indicated. In the latter event, the contractor shall report the instance in accordance with (a) above.

B–202 Relief From Responsibility. Subject to specific instructions of the contracting officer, and unless otherwise provided for in the contract, the contractor shall be relieved of his property control responsibility for Government property by the following:

(a) *Consumption of Property in the Performance of the Contract*—To the extent that the property administrator determines that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract;

(b) *Retention by the Contractor*—When the contractor retains with the approval of the contracting officer Government property for which the Government has received consideration;

(c) *Sale of Property*—For Government property sold pursuant to instructions of the plant clearance officer; *provided*, that the proceeds of such sale shall have been received by or credited to the Government;

(d) *Shipment of Government Property From a Contractor's Plant*—When Government property is shipped from the contractor's plant (except when shipment is to a subcontractor or other location of the contractor) pursuant to the instructions of the plant clearance officer or the property administrator; or

(e) *Determination by the Contracting Officer*—For Government property which is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, and for which the contracting officer has determined the extent of liability, if any, of the contractor; *provided* that:

(i) such determination is furnished to the contractor in writing;

(ii) the Government has been reimbursed where required by the determination; and

(iii) proper disposition of property rendered unserviceable by damage has been accomplished, and appropriate cross-reference is recorded on the determination as to the shipping document or other documents evidencing disposal.

B-203 Contractor's Liability.

(a) Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowances provided for by the terms of the contract, the bill of material, or other appropriate criteria.

(b) The contractor shall report all cases of loss, damage, or destruction of Government property in his possession or control to the property administrator as soon as such facts become known or when requested by the property administrator. The report shall be furnished when completed and accepted products or end items are lost, damaged, or destroyed while such property is in the possession or control of the contractor.

(c) The contractor shall require any of his subcontractors having Government property in their possession or control which is accountable under the contract to report to him all instances of loss, damage, or destruction of such Government property. Further procedures shall be in accordance with that prescribed in (a) and (b) above.

Part 3—Records of Government Property

B-300 Scope of Part. This Part prescribes minimum requirements for the establishment and maintenance of records by the contractor for Government property in his possession or control and for the submission of reports by the prime contractor of Government property, including property located at subcontractor plants, for which he is accountable.

B-301 General.

(a) It is the Government's policy to rely upon contractor property control records and to designate and use such records as the official contract records unless an exception has been authorized due to special circumstances. The contractor shall establish and maintain adequate control records, either manual or mechanized, in accordance with the requirements of this Appendix for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. When the subcontractor has a property control system approved by the Government for Government property provided under the subcontractor's own prime contracts, the contractor will utilize records created and maintained in accordance with such approved system unless otherwise directed by the property administrator.

(b) The contractor's property control system shall provide financial accounts for Government-owned facilities in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such facilities in the manner described in this Part 3.

(c) The official records shall be kept in such condition that at any stage of work under a contract the status of Government property may be readily ascertained.

(d) Separate property records for each contract are desirable but a consolidated property record may be maintained; *provided*, that the consolidated record provides the information set forth in this Part.

(e) Special tooling and special test equipment fabricated from materials which are the property of the Government will be appropriately recorded as Government-owned special tooling or special test equipment immediately upon fabrication. Special tooling and special test equipment fabricated from materials which are the property of the contractor will be appropriately recorded as Government property at the time title passes to the Government.

(f) Property records of the same type which would have been established for components if acquired separately shall be established for such useable components which are permanently removed from items of Government property as a result of modification or otherwise.

(g) The contractor's property control system shall contain an adequate locator system or techniques to permit the location of any item of Government property within a reasonable period of time after request therefor.

B-302 Pricing. Except as provided in B-302.1, the contractor's property control system shall contain the unit price for each item of Government property recorded therein. It is a recognized practice of many contractors to record the unit price of property on other than the quantitative inventory record, thus requiring the use of supplementary records to ascertain unit prices. Under such circumstances, the supplementary records containing such information shall be identified and recognized as a portion of the official property records. The requirement that unit prices be contained in the official property records will not apply to those separate property records located at contractor's secondary sites and subcontractor's plants; *provided*, that:

- (i) records maintained by the prime contractor at his primary site are in full compliance in this respect and
- (ii) the prime contractor agrees to furnish either actual or reasonable estimated unit prices to the secondary site or subcontractor as the need arises.

When definite information as to unit price cannot be obtained, reasonable estimates will be used.

B-302.1 *Contractor-Acquired and Contractor-Fabricated Property.* The unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with sound accounting principles and consistently applied. Generally, it is desired that separate unit prices be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if the maintenance of detailed cost records results in excessive accounting cost or is otherwise impracticable considering all circumstances, group pricing may be used for special tooling and special test equipment. Group pricing may also be used for work-in-process in accordance with the contractor's acceptable cost accounting system. Processed material, fabricated parts, components, assemblies, etc., charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing may be considered as work-in-process for the purpose of compliance with this requirement. Nothing in the foregoing lessens the requirement for quantitative property controls for special tooling, special test equipment, and work-in-process necessary for the proper protection of the Government's interest.

B-302.2 *Government-Furnished Property.* The unit price of Government-furnished property shall be determined by the Government and furnished to the contractor. Transportation and installation costs will not be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the contractor. In event the unit price is not provided on the document, action will be taken through the property administrator to obtain the information.

B-303 Records of Material. All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system, as follows.

(a) *Contractor's Property Control System.* Except as provided in (d) and (e) below, the contractor's property control system shall be such as to provide the following information:

- (i) contract number or equivalent code designation;
- (ii) nomenclature or description of item (including National Stock Number if known);

(iii) quantity received;
(iv) quantity issued;
(v) balance on hand;
(vi) posting reference and date of transaction;
(vii) unit price;
(viii) location; and
(ix) disposition.

(b) *Consolidated Stock Record*. When a contractor has more than one Government contract under which Government material is provided, a consolidated record for materials may be authorized by the property administrator; *provided*, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(c) *Custodial Records*. Custodial records shall be maintained for tool crib items, guard force items, protective clothing and other items issued for the use of individuals in the performance of their work under the contract.

(d) *Use of Receipt and Issue Documents*. When authorized by the property administrator, the contractor may maintain, in lieu of "stock records," a file of appropriately cross-referenced documents evidencing receipt, issue and use of Government-provided material which is issued for immediate consumption upon receipt and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized by the property administrator in the following instances:

(i) material charged through overhead, including but not limited to items used in manufacturing, maintenance, and office supplies;
(ii) material under research and development contracts;
(iii) subcontract or outside production items;
(iv) nonstock or special items (These items are considered to be those whose procurement cycle is irregular and infrequent.);
(v) items which are produced for direct charge to a contract, procured and issued for installation upon receipt, and involve no spoilage (such as maintenance and repair parts for plant equipment); or
(vi) items issued from contractor-owned inventory direct to production, maintenance, etc.

(e) *Multicontract Cost and Material Control*.

(i) *Description and Scope*. A multicontract cost and material control system constitutes a modification of the requirements for physical identification of Government material and substitutes therefor a system of financial accounting. The system operates as follows:

(A) The contractor may acquire, purchase, requisition, receive, store, and issue like items of material for the total requirements of all contracts involved in the system without identifying the material to each contract.

(B) The contractor may commingle, during all stages of contract performance, Government-owned and contractor-owned material and work-in-process, which was furnished, acquired, or produced for all Government contracts of any type covered by the system, without physical segregation or identification to the individual contracts.

(C) In lieu of physical segregation and identification to individual contracts, periodic calculation of requirements and distribution of costs to all contracts permits the allocation of material costs to products delivered. This system by reflecting the materials expended to perform each contract at any stage in production, permits usage analysis to determine the reasonableness of consumption and expenditure of Government material.

(D) The system may appropriately include all Government contracts of any time which involve common repetitive operations.

(E) The system does not require commingling of all common materials of all contracts included. For example, items of Government-furnished material of high value or in short supply may be excluded from commingling and reserved for use in performance of the contract under which furnished.

(F) Notwithstanding B–502, physical inventories of material in stores included in the systems (other than work-in-process) will be taken by the contractor at least annually, price extended, and reconciled to the quantitative balance for each item, and adjustments recorded in the stock record and financial inventory control accounts. Such physical inventories and adjustments shall be reviewed by and are subject to the approval of the property administrator. An equitable distribution to cost accounts of any inventory losses will be subject to a like review and approval.

(ii) *Authorization*. The Administrative Contracting Officer may authorize a contractor who is performing or will perform more than one Government contract to use the multicontract cost and material control system in accordance with this paragraph. The property administrator will, for each system authorized, approve detailed operating procedures as are necessary for that particular system.

(iii) *Criteria*. A multicontract cost and material control system may be authorized if:

(A) the contractor demonstrates that savings or improved operations will result from adoption of the system or that it will otherwise be in the interest of the Government;

(B) the contractor's accounting system is adequate to satisfy the requirements set out in B–312; and

(C) the system is applied to existing Government contracts only and excludes materials acquired or costs incurred for non-Government work or in anticipation of future Government work.

B–304 Records of Special Tooling. The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special tooling:

(i) contract number or equivalent code designation;

(ii) nomenclature or description of item (including identification number and item on which used);
(iii) quantity received or fabricated;
(iv) posting reference and date of transaction;
(v) location;
(vi) disposition;
(vii) unit or group price; and
(viii) retention category (when required by the contract).

(a) In the event group pricing of special tooling is utilized by the contractor, as recognized in B-302.1, unit prices may be computed as and when required.

(b) Retention category, item (viii) above (when applicable), shall be established by the contractor at time of acquisition or fabrication of the item of special tooling. Retention categories as defined below shall be used:

(i) *Assembly tooling*—required for manufacture of the end product but not required for production of spare parts. Those items having no post production need except for potential modification or resumed production programs.
(ii) *Critical Tooling*—those tools within a family of tools absolutely essential to fabricate spare parts and assemblies even at a minimum production rate. This would include basic forming tools and tooling for special processes. Tools within this category are to be further identified as:
  (A) *Spares tooling*—required to produce a provisioned spare part or assembly.
  (B) *Judgment (insurance) tooling*—fabrication tools for parts that are not provisioned spares but which in the judgment of the contractor will be required at some time for logistic support of the end item.
  (C) *Support tooling*—of secondary importance, necessary to economically produce at increased rates but not essential for parts fabrication at low production rates.

This information will be utilized to expedite screening when the special tooling becomes excess to contract requirements. After a major system has gone out of production, this information need not be required for those items of special tooling which have been retained for spares production, overhaul, or repair work.

B-305 Records of Special Test Equipment. The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special test equipment:

(i) contract number or equivalent code designation;
(ii) nomenclature or description of item (including identification number and item on which used);
(iii) identity of any general purpose test equipment incorporated as components in such a manner that removal and reutilization may be feasible and economical;
(iv) quantity received or fabricated;
(v) posting reference and date of transaction;
(vi) location;
(vii) disposition;

(viii) unit or group price; and

(ix) retention category (when required by the contract).

(a) In event group pricing of special test equipment is utilized by the contractor, as recognized in B-302.1, unit prices may be computed as and when required.

(b) Retention category, item (ix) above (when applicable), shall be established by the contractor at time of acquisition or fabrication of the item of special test equipment. Retention categories defined in B-304(b) will be used for special test equipment. This information will be utilized to expedite screening when the special test equipment becomes excess to contract requirements. After a major system has gone out of production, this information need not be required for those items of special test equipment which have been retained for spare production, overhaul or repair work.

B-306 Records of Plant Equipment.

(a) *Plant Equipment Costing $5,000 or More*. The contractor shall maintain individual item records (manual or mechanized) of each item of Government-owned plant equipment having a unit cost of $5,000 or more which will provide the following minimum information:

(i) Federal Supply Code for Manufacturer (Cataloging Handbooks H4-1, H4-2) and, at the option of the contractor, the name and address of the equipment manufacturer;

(ii) manufacturer's model/part number;

(iii) serial number and year built (when available);

(iv) U.S. Government identification/tag number;

(v) noun name of the item and Federal Supply Classification (Cataloging Handbooks H2-1, H2-2, and H2-3);

(vi) acquisition document reference and date;

(vii) location;

(viii) disposition document reference and date;

(ix) contract number or equivalent code designation;

(x) unit price when equipment is Government-furnished or cost (f.o.b. manufacturer) when contractor acquired. (Unit price will be reduced when accessory and auxiliary items are permanently separated from the basic item of plant equipment.)

DD Form 1342 may be used as a source document for setting up accounting records as prescribed herein.

(b) *Record of Accessory and Auxiliary Equipment*. Accessory and auxiliary equipment which is attached to or otherwise a part of an item of plant equipment or has been acquired for use in connection with a specific item, shall be recorded on the record of the item of plant equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded as indicated in B-306(d).

(c) *Record of Manufacturing Systems*. Where plant equipment (including accessory or auxiliary type items is assembled and interconnected to form a single operating unit to perform continuously the same manufacturing process, such equipment may, for property and inventory control purposes, be grouped and recorded as a single item of plant equipment on one plant equipment record in lieu of an individual item record for each component comprising the item of plant equipment. This does not obviate the requirement for adequately describing the component items on the plant equipment record nor does it preclude the use of more than one plant equipment record form when additional space is required.

(d) *Plant Equipment Costing Less Than $5,000*. Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for plant equipment costing less than $5,000 per unit. The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number or equivalent code designation;
(ii) noun name, Federal Supply Classification in Cataloging Handbooks H2-1, H2-2 and H2-3;
(iii) manufacturer or Federal Supply Code for the manufacturer and model/part number;
(iv) quantity received;
(v) balance on hand;
(vi) posting reference and date of transaction;
(vii) unit price;
(viii) location (see B-301(g)); and
(ix) disposition.

In addition, where appropriate as determined by the property administrator the serial number and/or Government identification number for each item shall be recorded in a permanent manner in the property records and, upon disposition, lined out or otherwise deleted from the record. DD Form 1342 may be used for individual record cards for items costing less than $5,000.

B-306.1 *Centrally Reportable Industrial Plant Equipment.*

(a) The contractor shall prepare a DD Form 1342 (Appendix F, F-200.1342) for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAV-SUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE), at the time (1) of receipt and acceptance of accountability by the contractor; (2) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC; (3) IPE is no longer required for the purpose authorized or provided; or (4) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to the Defense Industrial Plant Equipment Center (DIPEC). The contractor shall retain the original of each DD Form 1342 which may be used as the official property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the event which created the need for its preparation and forwarding. AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(b) IPE is identified by noun name in Joint DoD IPE Handbooks as listed in 13-312. Additional handbooks and page changes to existing handbooks, with asterisks denoting additions to the IPE scope, shall be published as required. Reporting of newly listed items which are in the possession of the contractor shall be accomplished within 180 days following the date of the new handbook or the page change.

B-307 Records of Real Property.

(a) Records of real property shall consist of maps, drawings, plans, and specifications supplemented, where necessary to reflect building installations such as heating, electrical, sanitary, ventilating, drainage, sprinkler systems, etc. Appropriate changes will be made to the records to reflect alterations, additions, or extensions to real property. Where the maps, drawings, plans, and specifications do not adequately reflect descriptive data as to buildings installations, supplemental records will be maintained. The foregoing records will: (i) be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation or assembly, of Government real property in possession of the contractor, shall be capitalized in the real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements including applicable portions of capital maintenance to Government real property which increase the value, life, utility, capability and/or serviceability, shall be capitalized.

(d) Costs incurred in the following circumstances shall not be capitalized in the Government real property records or financial accounts:

(i) A facility is specifically constructed for test purposes which include destruction of the facility.

(ii) The building is designed to be portable.

(e) Costs incurred for maintenance, repair and/or rearrangement of Government real property which maintain the property in good physical condition, utility, capacity, and/or serviceability, shall be charged to expense, and the real property records shall not be affected. See (c) above for costs which shall be capitalized.

(f) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement including pertinent facts.

B-308 Records of Scrap and Salvage. Except as provided in B-103(d), the contractor shall maintain records of all scrap or salvage generated. These records shall be in accordance with the contractor's established system of scrap and salvage control, if approved by the property administrator, who shall take into consideration the need for protecting the Government's interest in the proration, disposition, and allocation of proceeds resulting therefrom.

B-308.1 *Records of Scrap.* The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number, if practicable, or equivalent code designation;
(ii) scrap classification (material content);
(iii) quantity on hand;
(iv) unit of measure;
(v) posting references and date of transactions; and
(vi) disposition.

B–308.2 *Records of Salvage*. The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number, if practicable, or equivalent code designation;
(ii) nomenclature or description of item;
(iii) quantity on hand;
(iv) posting reference and date of transaction; and
(v) disposition.

B–309 Records of Related Data and Information. The contractor shall maintain property control and accountability in accordance with sound industrial practice with respect to manufacturing or assembly drawings, installation, operation, repair, or maintenance instructions, or other similar data and information furnished to the contractor by the Government. The requirements of this Appendix are not otherwise applicable to such property.

B–310 Records of Completed Products. The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of summarization of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location and disposition action.

(b) On contracts which provide that complete products are to be retained by the contractor for further use under the contract, or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as prescribed in this Part.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall, as a minimum, maintain a record by contract, setting forth a description of the items involved, quantities received and returned to the Government, and such other pertinent data as may be required to permit determination that a proper accounting for all property has been made.

B–311 Facilities Reporting. The contractor's property control system shall be such as to provide annually the total acquisition cost of Government facilities, as well as the quantity of Industrial Plant Equipment (IPE), for which the contractor is accountable under each contract with each Military Department or Defense Agency, including such facilities at subcontractor plants and at its alternate locations, in the following classifications:

(i) land and rights therein;
(ii) other real property, including utility distribution systems, buildings, structures, and improvements thereto;
(iii) IPE required to be reported to DIPEC in accordance with B–306.1;
(iv) other plant equipment, (OPE).

BEST DOCUMENT AVAILABLE

The contractor shall furnish to the property administrator, as of 30 September of each year, a report by contract, of the total acquisition cost of Government (DoD) facilities and the quantity of the IPE for which the contractor is accountable in each of the above classifications. This shall include facilities at subcontractor plants and at alternate locations for which the prime contractor is accountable. Reports shall be prepared on DD Form 1662, (*Report of Government (DoD) Facilities*), and furnished to the property administrator in duplicate no later than 21 October of each year.

Office of Management and Budget No. 22–RO235 has been assigned to the report.

B–312 Financial Accounting Requirements for Multicontract Cost and Material Control Systems. Whenever a multicontract cost and material control system is authorized, the contractor's financial accounts must include all material, including Government-furnished material in the system. Specifically, his accounting system must be adequate to:

(a) provide on a complete and timely basis a clear "audit trail" from costs of materials acquired for each contract to materials used or disposed of on each contract;

(b) reflect separately for Government-furnished and contractor-acquired material in stores (except work-in-process) the inventory balances as affected by receipts, issues, adjustments and other dispositions;

(c) determine unit costs for each identifiable part, component, subassembly, assembly, end item and contract item;

(d) calculate amounts for cost reimbursements and progress payments during the life of the contract by applying or allocating such unit costs developed through each stage of work-in-process to contract items for the requirements of each contract; and

(e) assure that when material furnished by one procuring activity is used on a contract of another procuring activity, the furnishing activity receives credit for such material.

B–313 Records of Property of Misdirected Shipments. The contractor's property control system shall be such as to provide the following information regarding each misdirected shipment of Government property received:

(i) identity of shipment (shipping document, bill of lading, etc.);
(ii) origin of shipment;
(iii) content (items in the shipment) per shipping document, if available;
(iv) location; and
(v) disposition.

B–314 Records of Property Provided Under Exception Authority. The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government property provided:

(i) exception identification number;
(ii) nomenclature or description of item;
(iii) quantity received;
(iv) posting reference and date of transaction;
(v) location;
(vi) disposition; and
(vii) unit price.

B-315 Records of Property Sent to Contractors for Processing and Return. The contractor shall maintain quantitative records of such items to assure control from time of receipt, during processing and return of the items to the DoD component. Such item records will be established by the contractor in accordance with his property control system but will include at least the following:

(i) contract number or equivalent code designation;
(ii) nomenclature or description of item including the National Stock Number;
(iii) quantity received;
(iv) unit price;
(v) location;
(vi) quantity returned to DoD component;
(vii) quantity disposed of otherwise pursuant to proper authority;
(viii) balance on hand; and
(ix) posting reference and date of transaction.

B-316 Records of Transportation and Installation Costs of Plant Equipment for Rental Purposes. The contractor shall record within the property control system the transportation and installation costs directly borne by the Government for each item of Government-owned plant equipment with an acquisition cost of over $5,000. When required, such recorded costs shall be provided to the administrative contracting officer for use in computing rental charges pursuant to 7-702.12.

(a) *Transportation Costs.*

(1) Transportation costs (other than included in purchase price) shall include costs of shipment of equipment to present location from the last prior location. These costs shall include line haul charges, add-on charges such as switching, diversion, pickup and delivery, over-dimensional, state permits, local permits, unloading, drayage, ocean, port handling, and other charges as shown on the applicable Government bill of lading or other transportation document to the receiving contractor location. When transportation costs are included in price of equipment delivered to using location, the property records should be so annotated.

(2) If transportation costs are not included in the price of equipment delivered to the using location, and are not otherwise available, the contractor shall prepare DD Form 1093, Freight Rate Request and Response, in triplicate. Item 4 of DD Form 1093 shall be modified to indicate the date or approximate date the shipment was received. The original and one copy of DD Form 1093 shall be forwarded through the property administrator to the transportation officer who will arrange for the estimated freight charges to be placed on the original. The original shall then be returned through the property administrator to the contractor for recording. In submitting freight data requests for a large number of items of plant equipment, special arrangements may be made to use machine listings *provided* such listings contain all essential information.

(b) *Installation Costs.*

(1) When installation is performed by the contractor, the cost shall be computed in accordance with the contractor's accounting system if acceptable for other contract cost determination purposes and recorded in the property record.

(2) When installation is subcontracted, the cost paid to the subcontractor shall be recorded in the property record.

(3) When installation costs are included in price of equipment delivered to the using location, the property records should be so annotated.

Part 4—Identification

B-400 Scope of Part. This Part establishes minimum requirements for the identification and marking of Government property in the possession or control of the contractor.

B-401 General. The contractor shall identify, mark, and record all Government property promptly upon receipt except as may be exempted by this Part; and it shall remain so identified so long as it remains in the custody, possession, or control of the contractor. Assigned Government property identification numbers will be recorded on all applicable receiving documents, shipping documents, disposal documents, and any other documents pertaining to the property control system. Such markings shall be removed or obliterated from the property involved when the disposal is by sale, scrap or through donation.

B-402 Material and Plant Equipment Costing Less Than $5,000 Per Unit. All Government material and plant equipment having an acquisition cost less than $5,000 shall be identified as Government property except in those cases where:

(a) no material or plant equipment costing less than $5,000 of the same type at the same location is owned by the contractor, his employees, or other contracting agencies;

(b) adequate physical control is maintained over tool crib items, guard force items, protective clothing, and other items issued for use by individuals in the performance of their work under the contract;

(c) property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and

(d) property is commingled, as authorized by B-103.

B-403 Special Tooling and Special Test Equipment. Government-owned special tooling and special test equipment shall be marked in accordance with the procedure established by the contractor and approved by the property administrator, unless it is determined by the contractor in an individual case that marking will damage the special tooling or special test equipment or is otherwise impracticable. The contractor shall advise the property administrator, in writing, of any such determination. Identification shall consist of a serial number (identification number) and the designation of the Department responsible for funding and control of the property as follows: Army—"USA," Navy—"USN", Air Force—"USAF," Defense Supply Agency—"USD," Defense Communications Agency—"DCA," Defense Nuclear Agency—"DNA," and Defense Mapping Agency—"DMA." If an item is already identified as U.S. property, the marking shall not be changed solely to conform to the provisions of this paragraph. Components of special test equipment, having an acquisition cost of $5,000 or more and incorporated in such a manner that removal and reutilization is feasible and economical, shall be marked in a manner similar to plant equipment as required by B-404. Components of special test equipment having an acquisition cost less than $5,000 may be identified in the same manner, when required for effective control, in accordance with a contractor's approved property control system.

B-404 Plant Equipment. Unless already marked in compliance with prior instructions, government-owned plant equipment excluding plant equipment excepted in B–402 shall be marked by the contractor with a government identification number, except when the size or nature of the equipment makes it impracticable, or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation. In such case, the item shall be entered and described on the record of equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a decal, metal, fiber, plastic or other plate directly to the equipment or by using indelible ink, acid or electric etch, steel dies, or other legible, permanent, conspicuous and tamper proof method. Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) a serial number and an indication of Department of Defense ownership; however, if the item is already identified as government property, the marking shall not be changed solely to conform to the provisions of this paragraph; and

(ii) in the case of items included within a standard departmental registration system (for example, automotive, construction, or material-handling equipment) application for a proper registration number will be made to the cognizant Department, which number may be used in lieu of any other identification number.

Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory and/or auxiliary equipment will be returned to the Government with the basic item with which associated. Identification numbers assigned and markings affixed shall be permanent and will not be changed as long as the equipment remains under the control of the Department of Defense, unless a change is necessary to eliminate duplicate numbers in which case the contractor will reidentify the item(s) in accordance with the approved system.

GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

Part 5—Physical Inventories

B-500 Scope of Part. This Part establishes minimum requirements for the physical inventory of Government property in the possession or control of the contractor.

B-501 Periodic Inventories. The contractor shall periodically physically inventory all Government property (except materials issued from stock for performance of manufacturing, research, design, or other services required by the contract) in his possession or control and shall cause his subcontractors to do likewise. The type and frequency of physical inventory and the procedures therefor shall be established by the contractor and approved by the property administrator. The contractor's procedures shall provide that personnel who perform the physical inventory are not the same individuals who maintain the property records or have custody of the property unless the size of the contractor's operation is so small as to make it impracticable to do so. In establishing type and frequency of physical inventory consideration should be given to contractor's established practices, type, and usage of the Government property in the possession or control of the contractor, amount of Government property involved and their monetary value, and the reliability of contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor; however, it may vary with the types of property being controlled. Inventory, as used here, consists of sighting, tagging or marking, describing, recording and reporting the property concerned and reconciling the property recorded and reported with the property records.

B-502 Inventories Upon Termination or Completion. Immediately upon termination or completion of a contract, the contractor shall perform a physical inventory adequate for disposal purposes of all Government property applicable to the terminated or completed contract. Further, the contractor shall cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property in the subcontractor's possession or control which is applicable to the terminated or completed contract.

(a) *Exception.* The requirement for physical inventory of Government property at the completion of a contract may be waived by the property administrator when the property applicable to the completed contract is authorized for use on a follow-on contract, *provided:*

(i) past experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(ii) a statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing formal inventory list and the contractor accepts responsibility and accountability for these balances under the terms of the follow-on contract.

B-503 Reporting Results of Inventories. The contractor shall, as a minimum, submit to the property administrator: (i) a listing which properly identifies all discrepancies disclosed by a physical inventory, and (ii) a signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement with the physical inventory except for discrepancies reported. The

BEST DOCUMENT AVAILABLE

listing and signed statement will be furnished with a minimum of delay after completion of the physical inventory.

B-504 Quantitative and Monetary Control. As directed or required by proper authority, contractor's reports of results of physical inventory action shall be prepared on both a quantitative and monetary basis and segregated by categories of property such as material (except material issued from stock for performance of manufacturing, research, design, or other services required by the contract), special tooling, special test equipment, and plant equipment.

GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

Part 6—Care, Maintenance and Utilization

B-600 Scope of Part. This Part establishes minimum requirements as to care, maintenance, and utilization of Government property in the possession or control of the contractor.

B-601 General. The contractor shall be responsible for the proper care, maintenance, and utilization of Government property in his possession or control from the time of receipt of the property until properly relieved of responsibility in accordance with the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

B-602 Contractor's Maintenance Program. The contractor's maintenance program (which shall be approved in accordance with B-101) shall be such as to provide for, consistent with sound industrial practice and the terms of the contract:

(i) disclosure of need for and the performance of preventive maintenance;
(ii) disclosure and reporting of need for capital type rehabilitation; and
(iii) recording of work accomplished under the program.

(a) *Preventive Maintenance*. Preventive maintenance is maintenance generally performed on a regular scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall consist of, but not be limited to, the following actions:

(i) inspecting buildings at such periodic intervals as will assure detection of deterioration and the need for repairs;
(ii) inspecting plant equipment at such periodic intervals as will assure detection of maladjustment, wear, or impending breakdown;
(iii) regularly scheduled lubrication of bearings and moving parts in accordance with a lubrication chart or equivalent plan;
(iv) protection from exposure to deteriorating agents;
(v) adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration of associated parts;
(vi) removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;
(vii) taking necessary precautions to prevent deterioration from contamination and corrosion; and
(viii) proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(b) *Capital Type Rehabilitation*. The contractor's maintenance program shall be such as to provide for the disclosure and reporting of the need for major repair, replacement, and other rehabilitation work for Government property in the possession or control of the contractor.

(c) *Records of Maintenance*. The contractor's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

B-603 Utilization of Government Property. The contractor's procedures shall be in writing and adequate (i) to assure that Government property will be utilized only for those purposes authorized in the contract, and that any required approvals are obtained, and (ii) to provide a basis for determining and allocating rental charges.

B-603.1 *Utilization of Industrial Plant Equipment.* The procedures applicable to IPE shall, as a minimum:

(i) establish a minimum level of utilization below which an analysis of need shall be made and retention justified, except for inactive approved plant equipment packages. The utilization level may be established for individual items or families of items depending upon circumstances of use;

(ii) provide for recording authorized and actual use consistent with the utilization levels established under (i) above;

(iii) require periodic analyses of production needs for IPE and of future utilization based upon known requirements; and

(iv) have firm provisions for immediately reporting to the contracting officer all IPE items for which retention is not justified.

B-604 Property in Possession of Subcontractors. The contractor shall require any of his subcontractors having Government property in their possession or control to adequately care for and maintain that property and assure that it is utilized only as authorized by the contract. Procedures necessary to the accomplishment of this responsibility shall be included in the contractor's approved property control system.

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APPENDIX C

GOVERNMENT PROPERTY — NONPROFIT CONTRACTORS

Part 1—Introduction

C-100 Scope of Appendix. This Appendix sets forth the basic requirements to be observed by contractors in establishing and maintaining control over Government property provided pursuant to the terms of contracts with the Departments (see 1-201.5). To the extent on any inconsistency between this Appendix and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

C-101 General. The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system (in accordance with the provisions of this Appendix) to control, protect, preserve and maintain all Government property. The contractor's property control system shall be in writing unless the property administrator determines that maintenance of a written system is unnecessary (see S3-302.1). This system shall be reviewed and, if satisfactory, approved in writing by the assigned property administrator. The contractor shall maintain and make available such records as are required by Part 3 of this Appendix and must account for all Government property until relieved of responsibility therefor in accordance with procedures set forth in Part 2 of this Appendix. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data to substantiate any request for discharge from responsibility.

(a) The contractor shall require any of his subcontractors who are provided Government property under the prime contract to comply with the provisions of this Appendix. Procedures for assuring subcontractor compliance shall be included in the contractor's approved property control system. In those instances where the property administrator assigned to the contract has requested supporting property administration, the contractor may accept the system approval and continuing surveillance of the supporting property administrator in lieu of performing duplicative actions to assure the subcontractor's compliance with the provisions of this Appendix.

(b) In the event any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, any necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control and corrective action is not reached between the contractor and the property administrator, the matter will be referred to the administrative contracting officer.

(c) Procedures for the control of scrap and salvage shall not be required unless the property administrator determines that the scrap and salvage is substantial in amount and that the Government is not receiving sufficient benefits from the use or disposal thereof. In this event the contractor shall establish a procedure whereby all Government property that can be salvaged shall be returned to Government stock, which procedure shall be subject to the approval of the property administrator.

(d) When Government property (excluding misdirected shipments) is disclosed to be in the possession or control of the contractor but not provided in accordance with the provisions of any contract, the contractor will, as promptly as possible, (i) record such property according to the established property control procedure, and (ii) furnish the property administrator all known circumstances and factual data pertaining to its receipt and a statement as to whether there is a need for retention of such property. For misdirected shipments, see C–312.

(e) The contractor shall report all Government property in excess of the amounts needed to complete full performance under the contract pursuant to which it was provided, or other existing contracts which authorize the use of such property, as promptly as possible after disclosure of the condition.

C–102 **Definitions.** As used in this Appendix:

C–102.1 *Property Administrator* means the individual designated by appropriate authority to administer the contract requirements and obligations relative to Government property. He is an authorized representative of the contracting officer.

C–102.2 *Government Property* means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(i) *Government-furnished property* is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(ii) *Contractor-acquired property* is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

C–102.3 *Provide*, as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

C–102.4 *Government Material* means Government property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed in the performance of a contract. It includes, but is not limited to, raw and processed materials, parts, components, assemblies and small tools and supplies.

C–102.5 *Special Tooling* means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacement thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) consumable property;
(ii) special test equipment; or
(iii) buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

C-102.6 *Special Test Equipment* means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment, that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "*special test equipment*" does not include:

(i) material;
(ii) special tooling;
(iii) buildings and nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment);
and
(iv) plant equipment items used for general plant testing purposes.

C-102.7 *Facilities* means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements and plant equipment.

C-102.8 *Real Property*, for purposes of accounting classification, means (i) land and rights therein; (ii) ground improvements; (iii) utility distribution systems; (iv) buildings; and (v) structures. It excludes foundations and other work necessary for the installation of special tooling, special test equipment, and plant equipment.

C-102.9 *Utility Distribution System* means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system), by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between:

(i) outside of the building or structure in which the services are used, and
(ii) the point of origin or disposal, or the connection with some other system.

For the purpose of this Appendix, it does not include communication services.

C-102.10 *Plant Equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) use or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

C-102.11 *Industrial Plant Equipment* (*IPE*) is that part of plant equipment with an acquisition of cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items, entailed in manufacturing, maintenance, supply, processing, assembly or research and development operations; and IPE is further identified by noun name in Joint DoD Handbooks as listed in 13-312.

C-102.12 *Other Plant Equipment* (*OPE*) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations; but excluding items categorized as IPE.

C-102.13 *Accessory Item* means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

C-102.14 *Auxiliary Item* means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

C-102.15 *Salvage* means property which because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

C-102.16 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

C-102.17 *Custodial Records* means written memorandum or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

C-102.18 *Individual Item Record* means a separate card form, or document utilized to account for one item of property.

C-102.19 *Stock Record* means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

C-102.20 *Discrepancies Incident to Shipment* means all deficiences incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to, loss, damage, destruction, improper status and condition coding, error in identity of classification, and improper consignment.

C-102.21 *Military Property* means Government-owned personal property designed for military operations. It includes end-items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item. It does not include Government material, special test equipment, special tooling or facilities.

C-102.22 *Property Account* means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this Appendix. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

C-102.23 *Educational or Other Nonprofit Organization* means any corporation, foundation, trust, or other institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

C-103 Segregation or Commingling of Government Property and Contractor's Property. Ordinarily, Government property, particularly material, should be segregated and kept physically separate from contractor-owned property at all times. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled:

(a) when the Government property is special tooling, special test equipment, or plant equipment which is clearly identified and recorded as Government property;

(b) when (i) scrap of a uniform nature is produced from both Government-owned and contractor-owned materials and physical segregation is impracticable, (ii) scrap produced from Government-owned materials is so insignificant in consideration of the cost of segregation and control;

(c) when approved by the property administrator.

C-104 Audit of Property Control System. The contractor's Government property control system shall be audited by the Government as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter, during the period the contractor is required to retain such records. The contractor shall make all such records, including correspondence related thereto, available to the auditors.

C-105 Administration of Military Property. Due to the special nature of military property, the contract under which it is provided generally will contain specific requirements for maintenance and control. Moreover, the following conditions shall be observed:

(i) each item of the property shall be identified by its Federal Item Identification Number and Government nomenclature; and

(ii) upon the completion or termination of the contract, the contractor shall request and comply with disposition instructions from the contracting officer.

To the extent specified in the contract, the provisions of this Appendix with respect to all Government property shall apply to military property.

Part 2—Contractor's Responsibility

C-200 Scope of Part. This Part covers to the extent not otherwise provided in the contract, (i) the duties and responsibilities of the contractor with respect to Government property, (ii) the obligations of the contractor with respect to the control of Government property, both physically and administratively, and (iii) the liability of the contractor for Government property lost, damaged, destroyed, or for which the contractor is otherwise unable to account.

C-201 Assumption of Responsibility. A contractor shall be responsible for all Government property in his possession or control in accordance with the terms of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. Sources from which Government property may be furnished or acquired are as follows:

(a) *Military Installation or Other Contractor's Plants.* Government property may be shipped to a contractor from military installations, other Government installations, or plants of Military Departments or other Government Agency contractors. For the purpose of this Appendix, the contractor shall become responsible for such property upon delivery of the property into his custody or control. The shipping activity shall furnish the contractor with copies of documents necessary to permit the contractor's property records to accurately reflect the transaction.

(b) *Direct Purchase by the Contractor.* Direct purchases shall be subject to a determination by the administrative contracting officer (ACO) that the items are allocable to the contract involved and are reasonably necessary. In the case of purchase authorization of IPE, such authorization shall include a citation of a DIPEC certificate of nonavailability number including a date by which the IPE must be purchased by the contractor. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired (see B-306.1, C-306.1, and F-200.1342). Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. For purposes of property control within the scope of this Appendix, it shall be considered that property purchased by the contractor for which reimbursement is to be requested, becomes Government property upon its receipt by the contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

(c) *Withdrawal From Contractor-Owned Stores.* For purposes of property control, within the scope of this Appendix, property withdrawn from contractor-owned stores, for direct charge to the contract, shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

(d) *Contract Provisions, Terminations, Contract Changes.* Pursuant to specific contractual provisions or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property. For purposes of property control, such property shall, unless otherwise provided by the contract, be considered Government property upon acceptance of title by the Government.

(e) *Advance, Progress, or Partial Payments.* Pursuant to the terms of a contract, the Government may acquire a lien or title to property upon the making of advance, progress, or partial payments to the contractor. Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the provisions of this Appendix.

C-201.1 *Evidence of Receipt of Government Property.* The contractor shall furnish written receipts for all, or specific classes of Government-provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. Where such evidence of receipt is required for contractor-acquired property, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher) for the property. In the instance of Government-furnished property, the required receipt shall be provided by the contractor immediately upon receipt of the property.

C-201.2 *Discrepancies Incident to Shipment.*

(a) *Government-Furnished Property.* When overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and the apparent causes in accordance with procedures approved by the property administrator pursuant to C-201. When the quantity or description of property received by a contractor differs from the quantity or description denoted as shipped on the shipping document, only that quantity, or property, actually received will be recorded on the official records of the contractor.

(b) *Contractor-Acquired Property.* The contractor shall take all actions necessary in adjustment of shortages, overages, or damages in shipment of contractor-acquired property from a vendor or supplier except in those instances wherein the shipment has moved via Government bill of lading and carrier liability is indicated. In the latter event, the contractor shall report the instance in accordance with (a) above.

C-202 Relief From Responsibility. Subject to specific instructions of the contracting officer, and unless otherwise provided for in the contract, the contractor shall be relieved of his property control responsibility for Government property by the following:

(a) *Consumption of Property in the Performance of the Contract*—To the extent that the property administrator shall determine that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract;

(b) *Retention by the Contractor*—When the contractor retains, with the approval of the contracting officer, Government property for which the Government has received consideration;

(c) *Sale of Property*—For Government property sold pursuant to instructions of the plant clearance officer; *provided* that, the proceeds of such sale shall have been received by or credited to the Government;

(d) *Shipment of Government Property From a Contractor's Plant*—When Government property is shipped from the contractor's plant (except when shipment is to a subcontractor or other location of the contractor) pursuant to the instructions of the plant clearance officer or the property administrator;

(e) *Determination by the Contracting Officer*—For Government property which is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, and for which the contracting officer has determined the extent of liability, if any, of the contractor; *provided* that:

(i) such determination is furnished to the contractor in writing;

(ii) the Government has been reimbursed where required by the determination; and

(iii) proper disposition of property rendered unserviceable by damage has been accomplished, and appropriate cross-reference is recorded on the determination as to the shipping documents or other documents evidencing disposal.

(f) *Transfer of Title*—The contractor shall be relieved of responsibility for Government property when title to the property has been transferred to the contractor in accordance with 4–116.4(c). (P.L. 85–934)

C–203 Contractor's Liability.

(a) Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowance provided for by the terms of the contract, the bill of materials, or other appropriate criteria.

(b) The contractor shall report all cases of loss, damage, or destruction of Government property in his possession or control to the property administrator as soon as such facts become known or when requested by the property administrator. The report shall contain all factual data as to the circumstances surrounding such loss, damage, or destruction. A similar report shall be furnished when completed products or end items are lost, damaged, or destroyed while such property is in the possession or control of the contractor.

(c) The contractor shall require any of his subcontractors having Government property in their possession or control which is accountable under the contract to report to him all instances of loss, damage, or destruction of such Government property. Further procedures shall be in accordance with that prescribed in (a) and (b) above.

GOVERNMENT PROPERTY — NONPROFIT CONTRACTORS

Part 3—Records of Government Property

C-300 Scope of Part. This Part prescribes minimum requirements for the establishment and maintenance of records by the contractor for Government property in his possession or control and for the submission of reports by the prime contractor of Government property, including property located at subcontractor plants, for which he is accountable.

C-301 General.

(a) It is the Government's policy to rely upon contractor property control records and to designate and use such records as the official contract records unless an exception has been authorized due to special circumstances. The contractor shall establish and maintain adequate control records, either manual or mechanized, in accordance with the requirements of this Appendix for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. When the subcontractor has a property control system approved by the Government for Government property provided under the subcontractor's own prime contracts, the contractor will utilize records created and maintained in accordance with such approved system unless otherwise directed by the property administrator.

(b) The contractor's property control system shall provide financial data for Government-owned facilities in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such facilities in the manner described in this Part 3.

(c) The official records shall be kept in such condition that at any stage of work under a contract the status of Government property can be readily ascertained.

(d) Separate property records for each contract are desirable but a consolidated property record may be maintained; *provided*, that the consolidated record provides the information set forth in this Part.

(e) Special tooling and special test equipment fabricated from materials which are the property of the Government will be appropriately recorded as Government-owned special tooling or special test equipment immediately upon fabrication. Special tooling and special test equipment fabricated from materials which are the property of the contractor will be appropriately recorded as Government property at the time title passes to the Government.

(f) Property records of the same type which would have been established for components if acquired separately shall be established for such usable components which are permanently removed from items of Government property, as a result of modification, or otherwise.

(g) The contractor's property control system shall contain an adequate locator system or techniques to permit the location of any item of Government property within a reasonable period of time after request therefor.

C-302 Pricing. Except as provided in C-302.1, the contractor's property control system shall contain the unit price for each item of Government property recorded therein. It is a recognized practice of many contractors to record the unit price of property on other than the quantitative inventory record, thus requiring the use of supplementary records to ascertain unit prices. Under such circumstances, the supplementary records containing such information shall be identified and recognized as a portion of the official property records.

C-302.1 *Contractor-Acquired and Contractor-Fabricated Property.* Except for items fabricated for research and development purposes by the contractor, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with sound accounting principles and consistently applied. Generally, it is desired that separate unit prices be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if the maintenance of detailed cost records results in excessive accounting cost or is otherwise impracticable considering all circumstances, group pricing may be used for special tooling and special test equipment. Group pricing may also be used for work-in-process in accordance with the contractor's acceptable cost accounting system. Processed material, fabricated parts, components, assemblies, etc., charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for the purpose of compliance with this requirement. Nothing in the foregoing lessens the requirement for quantitative property controls for special tooling, special test equipment, and work-in-process necessary for the proper protection of the Government's interest.

C-302.2 *Government-Furnished Property.* The unit price of Government-furnished property shall be determined by the Government and furnished to the contractor. Transportation and installation costs will not be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, action will be taken through the property administrator to obtain the information.

C-303 Records of Material. All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

(a) *Material Issued Directly Upon Receipt.*

- (i) *Fixed-Price Contracts.* In the case of Government-furnished material which is issued directly by the contractor upon receipt so as to be considered consumed under the contract, and in the case of minor plant equipment and special tooling, the documents evidencing receipt and issue maintained by the contractor will be accepted as property control records; and
- (ii) *Cost-Type Contracts.* For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered consumed under the contract, for minor plant equipment, and for special tooling, the Government invoices, contractor's purchase documents or other documentary evidence of acquisition and issue, will be accepted as adequate property records.

(b) *Material Maintained in Stocks*. For material maintained by the contractor in stocks or stores, the contractor's property control system shall be such as to provide the following information:

(i) contract number or equivalent code designation,
(ii) nomenclature or description of item,
(iii) quantity received,
(iv) quantity issued,
(v) balance on hand,
(vi) posting reference,
(vii) date received or issued,
(viii) price, and
(ix) disposition action taken.

(c) *Consolidated Stock Record*. When a contractor has more than one Government contract under which Government material is provided, a consolidated record for material may be authorized by the property administrator; *provided*, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(d) *Custodial Records*. Custodial records shall be maintained for tool crib items, guard force items, protective clothing and other items for the use of individuals in the performance of their work under the contract.

C-304 Records of Special Tooling. In the case of special tooling acquired or fabricated by the contractor or furnished by the Government, for research and development purposes, the Government invoices, contractor's purchase document or other documental evidence of acquisition and issue, will be accepted as adequate property control records.

C-305 Records of Special Test Equipment. The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special test equipment:

(i) contract number or equivalent code designation,
(ii) nomenclature or description of item (including indentification number and item on which used),
(iii) identity of any general purpose test equipment incorporated as components in such a manner that removal and reutilization may be feasible and economical,
(iv) quantity received or fabricated,
(v) posting reference and date of transaction,
(vi) location,
(vii) disposition, and
(viii) unit or group price.

In event group pricing of special test equipment is utilized by the contractor, as recognized in C-302.1, unit prices may be computed as and when required.

C-306 Records of Plant Equipment.

(a) *Plant Equipment Costing $5,000 or More*. The contractor shall maintain individual item records (manual or mechanized) of each item of Government- |

owned plant equipment having a unit cost of $5,000 or more which will provide the following minimum information:

(i) Federal Supply Code for Manufacturer (Cataloging Handbooks H4-1, H4-2) and, at the option of the contractor, the name and address of the equipment manufacturer;
(ii) manufacturer's model/part number;
(iii) serial number and year built (when available);
(iv) U.S. Government identification/tag number;
(v) noun name of the item and Federal Supply Classification (Cataloging Handbook H2-1, H2-2, and H2-3);
(vi) acquisition document reference and date;
(vii) location;
(viii) disposition document reference and date;
(ix) contract number or equivalent code designation; and
(x) unit price when equipment is Government furnished or cost (f.o.b. manufacturer) when contractor acquired (Unit price will be reduced when accessory and auxiliary items are permanently separated from the basic item of plant equipment.).

DD Form 1342 may be used as a source document for setting up accounting records as prescribed herein.

(b) *Plant Equipment Costing Less Than $5,000*. Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for plant equipment costing less than $5,000 per unit. The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number or equivalent code designation;
(ii) noun name, Federal Supply Classification in Cataloging Handbooks H2-1, H2-2, and H2-3;
(iii) manufacturer or Federal Supply Code for the manufacturer and model/part number;
(iv) quantity received;
(v) balance on hand;
(vi) posting reference and date of transaction;
(vii) unit price;
(viii) location (see C-301(g)); and
(ix) disposition.

In addition, where appropriate as determined by the property administrator, the serial number and/or Government identification number for each item shall be recorded in a permanent manner in the property records and upon disposition, lined out or otherwise deleted from the record. DD Form 1342 may be used for individual record cards for items costing less than $5,000.

(c) *Record of Accessory and Auxiliary Equipment*. Accessory and auxiliary equipment, which is attached to or otherwise a part of an item of plant equipment or has been acquired for use in connection with a specific item, shall be recorded on the record of the item of plant equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded as indicated in C-306(b).

C-306.1 *Centrally Reportable Industrial Plant Equipment.*

(a) The contractor shall prepare a DD Form 1342 (Appendix F, F-200.1342) for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAV-SUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment(IPE), at the time (1) of receipt and acceptance of accountability by the contractor; (2) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC; (3) IPE is no longer required for the purpose authorized or provided; or (4) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to the Defense Industrial Plant Equipment Center (DIPEC). The contractor shall retain the original of each DD Form 1342 which may be used as the official property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the event which created the need for its preparation and forwarding. AR 700-43 / NAVSUP PUB 5009 / AFM 78-9/ DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(b) IPE is identified by noun name in Joint DoD IPE Handbooks as listed in 13-312. Additional handbooks and page changes to existing handbooks, with asterisks denoting additions to the IPE scope, shall be published as required. Reporting of newly listed items which are in the possession of the contractor shall be accomplished within 180 days following the date of the new handbook or the page change.

C-307 Records of Real Property.

(a) In the case of real property furnished by the Government under fixed price contracts, and in the case of real property furnished by the Government and acquired by the contractor, title to which vests in the Government, under cost type contracts the contractor shall maintain a continuous itemized record of the description, location, acquisition cost, and disposition of all government real property including unimproved real property, all alterations and all construction work, and sites connected with such alteration and construction, acquired by purchase, lease or otherwise. The foregoing records will: (i) be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation or assembly, of government real property in possession of the contractor, shall be capitalized in the real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements including applicable portions of capital maintenance to government real property which increase the value, life, utility, capability and/or serviceability, shall be capitalized.

(d) Costs incurred in the following circumstances shall not be capitalized in the government real property records or financial accounts:

(i) A facility is specifically constructed for test purposes which include destruction of the facility.

(ii) The building is designed to be portable.

(e) Costs incurred for maintenance, repair and/or rearrangement of Government real property which maintain the property in good physical condition, utility, capacity, and/or serviceability, shall be charged to expense, and the real property records shall not be affected. See (c) above for costs which shall be capitalized.

(f) When government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement including pertinent facts.

C-308 Records of Scrap and Salvage. In the event procedures for the control of scrap and salvage are required (see C-101(c)) and except as provided in C-103(b), the contractor shall maintain records of all scrap and salvage generated.

C-308.1 *Records of Scrap.* The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number, if practicable, or equivalent code designation;
(ii) scrap classification (material content);
(iii) quantity on hand;
(iv) unit of measure;
(v) posting reference and date of transaction; and
(vi) disposition.

C-308.2 *Records of Salvage.* The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number, if practicable, or equivalent code designation;
(ii) nomenclature or description of item;
(iii) quantity on hand;
(iv) posting reference and date of transaction; and
(v) disposition.

C-309 Records of Related Data and Information. The contractor shall maintain property control and accountability in accordance with sound business practice with respect to manufacturing or assembly drawings, installations, operation, repair, or maintenance instructions, or other similar data and information furnished to the contractor by the Government. The requirements of this Appendix are not otherwise applicable to such property.

C-310 Records of End Items. The contractor shall maintain a record of all completed products produced under the contract as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summarization of quantities accepted or shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts which provide that completed products are to be retained by the contractor for further use under the contract, or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as prescribed in this Part.

C-311 Facilities Reporting. The contractor's property control system shall be such as to provide annually the total acquisition cost of Government facilities, as well as the quantity of Industrial Plant Equipment (IPE), for which the contractor is accountable under each contract with each Military Department, including such facilities at subcontractor plants, in the following classifications:

(i) land and rights therein;
(ii) other real property, including utility distribution systems, buildings, structures, and improvements thereto;
(iii) IPE required to be reported to DIPEC in accordance with C-306.1;
(iv) other plant equipment (OPE).

The contractor shall furnish to the property administrator, as of 30 September of each year, a report by contract, of the total acquisition cost of Government (DoD) facilities and the quantity of IPE for which the institution is accountable, falling in each of the above classifications. This shall include facilities at subcontractor plants and at alternate locations for which the prime contractor is accountable. Reports shall be prepared on DD Form 1662, (*Report of Government (DoD) Facilities*), and furnished to the property administrator in duplicate no later than 21 October of each year.

Office of Management and Budget No. 22-RO235 has been assigned to this report.

C-312 Records of Property of Misdirected Shipments. The contractor's property control system shall be such as to provide the following information regarding each misdirected shipment of Government property received:

(i) identity of shipment (shipping document, bill of lading, etc.);
(ii) origin of shipment;
(iii) content (items in the shipment) per shipping documents, if available;
(iv) location; and
(v) disposition.

Part 4—Identification

C–400 Scope of Part. This Part establishes minimum requirements for the identification and marking of Government property in the possession or control of the contractor.

C–401 General. The contractor shall identify, mark, and record all Government property promptly upon receipt, except as may be exempted by this Part, and it shall remain so identified so long as it remains in the custody, possession, or control of the contractor. Assigned Government property identification numbers will be recorded on all applicable receiving documents, shipping documents, disposal documents, and any other documents pertaining to the property control system. Such markings shall be removed or obliterated from the property involved when the disposal is by sale, scrap or through donation.

C–402 Material and Plant Equipment Costing Less Than $1,000 Per Unit. All Government material and plant equipment having an acquisition cost less than $1,000 shall be identified as Government property except in those cases where:

(a) no material or plant equipment costing less than $1,000 of the same type at the same location is owned by the contractor, his employees or other contracting agencies;

(b) adequate physical control is maintained over tool crib items, guard force items, protective clothing, and other items issued for use by individuals in the performance of their work under the contract;

(c) property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and

(d) property is commingled, as authorized by C–103.

C–403 Special Tooling and Special Test Equipment. Government-owned special tooling and special test equipment shall be marked in accordance with the procedure established by the contractor and approved by the property administrator, unless it is determined by the contractor in an individual case that marking will damage the special tooling or special test equipment or is otherwise impracticable. The contractor shall advise the property administrator, in writing, of any such determination. Identification shall consist of a serial number (identification number), and the designation of the Department responsible for funding and control of the property as follows: Army—"USA," Navy—"USN," Air Force—"USAF," Defense Supply Agency—"USD," Defense Communications Agency—"DCA," Defense Nuclear Agency—"DNA," and Defense Mapping Agency—"DMA." If an item is already identified as U.S. property, the marking shall not be changed solely to conform to the provisions of this paragraph. Components of special test equipment, having an acquisition cost of $1,000 or more and incorporated in such a manner that removal and reutilization is feasible and economical, shall be marked in a manner similar to plant equipment as required by C–404. Components of special test equipment having an acquisition cost less than $1,000 may be identified in the same manner, when required for effective control, in accordance with a contractor's approved property control system.

C–404 Plant Equipment. Unless already marked in compliance with prior instructions, government-owned plant equipment excluding plant equipment excepted in C–402, shall be marked by the contractor with a government identification number, except when the size or nature of the equipment makes it impracticable, or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation. In such case, the item shall be entered and described on the record of equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a decal, metal, fiber, plastic or other plate directly to the equipment or by using indelible ink, acid or electric etch, steel dies, or other legible, permanent, conspicuous and tamper proof method. Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) a serial number and an indication of Department of Defense ownership; however, if the item is already identified as government property, the marking shall not be changed solely to conform to the provisions of this paragraph; and

(ii) in the case of items included within a standard departmental registration system (for example, automotive, construction, or material-handling equipment) application for a proper registration number will be made to the cognizant Department, which number may be used in lieu of any other identification number.

Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory and/or auxiliary equipment will be returned to the Government with the basic item with which associated. Identification numbers assigned and markings affixed shall be permanent and will not be changed as long as the equipment remains under the control of the Department of Defense, unless a change is necessary to eliminate duplicate numbers in which case the contractor will reidentify the item(s) in accordance with the approved system.

GOVERNMENT PROPERTY — NONPROFIT CONTRACTORS

Part 5—Physical Inventories

C-500 Scope of Part. This Part establishes minimum requirements for the physical inventory of Government property in the possession or control of the contractor.

C-501 Periodic Inventories. The contractor shall periodically physically inventory Government property (except materials issued from stock for performance of manufacturing, research, design, or other services required by the contract) in his possession or control and shall cause his subcontractors to do likewise. Such periodic inventories normally shall be limited to materials, special tooling and minor plant equipment held in stocks and stores, and all special test equipment and other plant equipment. The type and frequency of physical inventory and the procedures therefor shall be established by the contractor and approved by the property administrator. The contractor's procedures shall provide that personnel who perform the physical inventory are not the same individuals who maintain the property records or have custody of the property unless the size of the contractor's operation is so small as to make it impracticable to do so. In establishing type and frequency of inventory, consideration should be given to contractor's established practices, type, and usage of the Government property in the possession or control of the contractor, amount of Government property involved and their monetary value, and the reliability of contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor; however, it consists of sighting, tagging or marking, describing, recording and reporting may vary with the types of property being controlled. Inventory, as used here, the property concerned and reconciling the property so recorded and reported with the property records.

C-502 Inventories Upon Termination or Completion. Immediately upon termination or completion of a contract, the contractor shall perform a physical inventory adequate for disposal purposes, of all Government property applicable to the terminated or completed contract. Further, the contractor shall cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property in the subcontractor's possession or control which is applicable to the terminated or completed contract.

(a) *Exception.* The requirement for physical inventory of Government property at the completion of a contract may be waived by the property administrator when the property applicable to the completed contract is authorized for use on a follow-on contract, *provided:*

- (i) past experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and
- (ii) a statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(b) *Listings for Disposal Purposes:*

- (i) Standard items that have been modified may be described, on listings for disposal purposes, as standard items with a general description of the modification.

(ii) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

C-503 **Reporting Results of Inventories.** The contractor shall, as a minimum, submit to the property administrator: (i) a listing which properly identifies all discrepancies disclosed by a physical inventory, and (ii) a signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement with the physical inventory except for discrepancies reported. The listing and signed statement will be furnished with a minimum of delay after completion of the physical inventory.

C-504 **Quantitative and Monetary Control.** As directed or required by proper authority, contractor's reports of results of physical inventory action shall be prepared on both a quantitative and monetary basis and segregated by categories of property such as material (except material issued from stock for performance of manufacturing, research, design, or other services required by the contract), special tooling, special test equipment, and plant equipment.

GOVERNMENT PROPERTY — NONPROFIT CONTRACTORS

Part 6—Care, Maintenance and Utilization

C-600 Scope of Part. This Part establishes minimum requirements as to care, maintenance, and utilization of Government property in the possession or control of the contractor.

C-601 General. The contractor shall be responsible for the proper care, maintenance, and utilization of Government property in his possession or control from the time of receipt of the property until properly relieved of responsibility in accordance with the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

C-602 Contractor's Maintenance Program. The contractor's maintenance program (which shall be approved in accordance with C-101) shall be such as to provide for, consistent with the terms of the contract:

(i) disclosure of need for and the performance of preventive maintenance,
(ii) disclosure and reporting of need for capital type rehabilitation, and
(iii) recording of work accomplished under the program.

(a) *Preventive Maintenance.* Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall consist of, but not be limited to, the following actions:

(i) inspecting buildings at such periodic intervals as will assure detection of deterioration and the need for repairs;
(ii) inspecting plant equipment at such periodic intervals as will assure detection of maladjustment, wear, or impending breakdown;
(iii) regularly scheduled lubrication of bearings and moving parts in accordance with a lubrication chart or equivalent plan;
(iv) protection from exposure to deteriorating agents;
(v) adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration of associated parts;
(vi) removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;
(vii) taking necessary precautions to prevent deterioration from contamination and corrosion; and
(viii) proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(b) *Capital Type Rehabilitation.* The contractor's maintenance program shall be such as to provide for the disclosure and reporting of the need for major repair, replacement, and other rehabilitation work for Government property in the possession or control of the contractor.

(c) *Records of Maintenance.* The contractor's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

C-603 Utilization of Government Property. The contractor's procedures shall be in writing and adequate to assure that Government property will be utilized only for those purposes authorized in the contract.

C-603.1 *Utilization of Industrial Plant Equipment.* The procedures applicable to IPE shall include, as a minimum:

(i) methods which provide for a review of all IPE needs and usage;
(ii) provisions for reporting immediately to the contracting officer IPE items for which retention is not justified;
(iii) rejustification of the need of IPE, upon request of the contracting officer.

C-604 Property in Possession of Subcontractors. The contractor shall require any of his subcontractors having Government property in their possession or control to adequately care for and maintain that property and assure that it is utilized only as authorized by the contract. Procedures necessary to the accomplishment of this responsibility shall be included in the contractor's approved property control system.

APPENDIX D

NOTICE AND HEARING UNDER GRATUITIES CLAUSE

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APPENDIX D

NOTICE AND HEARING UNDER GRATUITIES CLAUSE—(7-104.16)

D-1. Introduction

10 U.S.C. 2207 requires all contracts, other than contracts for personal services, which call for the expenditure of funds appropriated for the Department of Defense, to contain a clause permitting the termination of the contractor's right to proceed under any such contract and permitting the Government to pursue the remedies that it could pursue in the event of breach of contract if it is found after notice and hearing by the Secretary of the Department with which the contract was made, or by his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract. The Military Departments have prescribed the use of such clause, as set forth in the Armed Services Procurement Regulation, paragraph 7-104.16, in contracts as required by the above Act and in other procurement contracts. It is the purpose of these rules to make provisions for the giving of the notice of hearing, for the conduct of the hearing, and for other procedural matters incident to the exercise of the rights and special remedies provided by the prescribed clause, wherever it is now or may hereafter be used in contracts of the Military Departments. In the interest of uniformity in proceedings before the three Military Departments, these rules are hereby adopted. Nothing herein shall be construed to affect or impair (1) the pursuit of other remedies available to the Government in any instance, or (2) the right of termination of any contract for any reason available to the Government under the terms of such contract.

D-2. Definitions

Department. The term "*Department*" means the Department of the Army, the Department of the Navy, or the Department of the Air Force.

Secretary. The term "*Secretary*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department.

Designee. The term "*designee*" means the person or board to whom authority has been delegated by the Secretary under Rule 3. The designee is the Secretary's authorized representative.

D-3. Delegation of Authority

The Secretary may delegate to any person, military or civilian, or board of such persons within his Department all the authority of the Secretary conferred by statute or the prescribed contract clause to give notice of hearings, to conduct hearings and to make findings of fact with respect to (i) whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract; and (ii) where appropriate, the amount of the costs incurred by the contractor in providing such gratuity. If the Secretary delegates his authority to a board, one of the members thereof shall be a person trained in the law, and the Secretary shall designate one member to be the presiding officer of the board.

D-4. Notice and Contents

Whenever information coming to the attention of the Department indicates that the procedures provided herein may be properly invoked, the Department may cause a written notice to be served upon the contractor in the manner hereinafter provided. The notice shall be signed by the Secretary or his designee and dated and shall include the following items:

(i) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contract or contracts involved, and the ultimate facts to be determined. The time of the hearing shall not be less than 10 days after service of the notice.

(ii) Brief allegations setting forth the circumstances surrounding the offering or giving of the gratuity, including a description of the alleged gratuity itself and its estimated cost to the contractor; an identification of the offeree or donee and of the offeror or donor and the latter's relationship to the contractor; and the approximate date and place of the alleged offer or gift. Such allegations need by only sufficient to apprise the contractor reasonably of the issues involved in the hearings.

(iii) A request that the contractor answer in writing the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearing to adduce such evidence with respect to the alleged offer or gift as he may desire.

A suggested form of notice is set out as an appendix to these rules.

D-5. Service of Notice

Service shall be made by mailing or delivering a copy of the notice to the contractor. Delivery of a copy means handing it to the party to be served, or, if the party is a corporation, partnership, or unincorporated association, handing it to an officer, partner, managing or general agent, or any other agent authorized by appointment or by law to receive service of process, or by leaving the copy at the contractor's office with the person in charge thereof. Service by mail shall be made only by certified mail and service shall be complete upon mailing. The manner of service shall be evidenced by the signed endorsement of the person making the service upon a copy of the notice to be included in the record of the proceeding. Service of notice may be accepted or waived by the contractor by written endorsement on a copy of the notice.

D-6. Continuances and Delays

The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

D-7. Parties

The parties to the hearing will be the contractor concerned and the Government. No intervention by other persons shall be permitted.

D-8. Representation and Hearing Assistants

The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The Department will make available such technical assistants, including a reporter, secretary or notary, as may be required.

D-9. Transcript

Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof as the Department may by order fix.

D-10. Hearings

Hearings shall be conducted by the Secretary or his designee. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrelevant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The hearing officer shall make such rulings with respect to the conduct of hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these Rules and requirements of due process of law.

D-11. Depositions

Following service of the notice of hearing, a deposition may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

(a) *Notice to Take.* When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least ten days' notice of the time when and the place where such deposition will be taken, the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross interrogatories should be served upon the party giving the notice within 5 days from the receipt of the notice to take the deposition. Notices may be served upon the contractor as provided by Rule 4 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered and service will be complete upon mailing.

(b) *Taking Depositions.* Depositions may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Objections will be reserved for determination at the hearing; *provided*, however, objections as to the form of questions shall be made and noted in the deposition. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the Secretary or his designee.

(c) *Use of Deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

D-12. Submissions Without Appearance: Absence of Parties

If the contractor fails or refuses to appear or to make a written submission without appearing at the hearing, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing. Notwithstanding the nonappearance of the contractor at the hearing, proposed findings, conclusions, and argument may be submitted in writing on the contractor's behalf as provided in Rule 13.

D-13. Argument and Request for Findings

Within the discretion of the person presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing. Within ten days after the hearing is completed, both parties may file in writing with the person or board conducting the hearing proposed findings and conclusions with reasons and argument in support thereof. Copies will be provided to the opposite party.

D-14. Findings and Decision

As soon as practicable after completion of the hearing and the timely submission of proposed findings and conclusions, the person or board that conducted the hearing shall make written findings and conclusions with respect to all material issues; reasons for the findings will be included at such length as may be appropriate. The findings where adverse to the contractor will include, in addition to other appropriate items, the following: (i) a description of the gratuity that was offered or given; (ii) a statement of the costs incurred by the contractor in providing the gratuity; (iii) the name and relationship to the contractor of the person by whom the gratuity was offered or given on the contractor's behalf; (iv) the name and position of the officer or employee of the Government to whom the gratuity was offered or given; (v) a description of the contract which the Contractor sought to secure by the offering or giving of the gratuity, or a statement as to the nature of the favorable treatment so sought with respect to the awarding or

NOTICE AND HEARING UNDER GRATUITIES CLAUSE—(7-104.16)

amending, or the making of any determinations with respect to the performing of a contract. When the findings are made by a designee they shall be forwarded to the Secretary with recommendations as to whether the right of the contractor to proceed under any contract mentioned in the notice of hearing shall be terminated, and as to the exemplary damages to be imposed against the contractor, which shall be in an amount which shall not be less than three nor more than ten times the costs incurred in providing the gratuity.

Approved this 5th day of July 1952.

(*Signed*) **Earl D. JOHNSON,**
Assistant Secretary of the Army.
(*Signed*) **H. R. ASKINS,**
Assistant Secretary of the Navy.
(*Signed*) **Roswell L. GILPATRIC,**
Under Secretary of the Air Force.

90-108 O—82——33

NOTICE AND HEARING UNDER GRATUITIES CLAUSE—(7-104.16)

APPENDIX TO RULES

Form of Notice

BEFORE THE..
OF THE...

In the Matter of the XYZ Corporation,
Contract ....: Proceedings
Pursuant to Clause .... of
Contract No. ....

File No. ....

To: XYZ Corporation
Rockefeller Plaza
New York City, New York

1. You are hereby notified that at ....M. on ....1952, at room .... of the ....Building, ..., a hearing will be held before .... to determine whether or not under the provisions of clause .... of Government contract .... a gratuity has been offered or given on behalf of the XYZ Corporation to an officer or employee of the Government of the United States with a view toward securing (a contract)(favorable treatment with respect to the awarding or amending, or the making of any determinationws with respect to the performing of a contract). If it is found that a gratuity was so offered or given, your right to proceed under the contract may be terminated, and a penalty imposed in accordance with the contract clause mentioned above. In the event of such termination the Government will be entitled to pursue the remedies available for breach of contract.

2. The hearing at the time and place aforesaid will be held under the authority of (cite applicable Public Law and clause of contract(s)). Enclosed is a copy of the Rules promulgated by the Secretary of the .... pursuant to which the hearing will be conducted. Papers pertaining to the proceedings may be captioned as above.

3. The contract(s) involved in the hearing, and which is (are) subject to termination if a gratuity is found to have been given or offered to secure favorable action as aforesaid, is (are) identified as follows:

Contract number .... dated .... under the cognizance of .... and executed
by .... on behalf of the Govenment as the Contracting Officer.

4. The gratuity offered or given and the circumstances relating thereto are alleged to be as follows: (Include in a concise statement the nature of the alleged gratuity; a fair estimate of the costs incurred by the contractor in providing the gratuity; the identify of the offeree or donee and his position with the Government; the identity of the offerer or donor and his relationship to the contractor; and the approximate date, time, and place of the alleged offer or gift. Also allege, as appropriate, that the gratuity was (offered) (given) with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of a determination with respect to the performing of a Government contract. Identify or describe the contracts involved). On proof of the facts alleged as aforesaid, the Government, in accordance with the applicable statutory and contract provisions mentioned in paragraph 2, may terminate your right to proceed under the contract identified in paragraph 3 and to pursue the remedies available for breach of contract; also to impose exemplary damages as provided in such law and contract provision.

5. If you desire to be heard in this matter, you are requested to file with the Department on or before the time of the hearing a written answer and to appear at the hearing.

Dated ....

By direction of the ....
of the ....

NOTE: Portions set apart by parentheses should be stricken or modified as appropriate to conform to the facts.

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APPENDIX E

DEFENSE CONTRACT FINANCING REGULATIONS

E-000 Scope—Financing Defined. These regulations cover the financing of contracts and subcontracts for the national defense. They are applicable to contract financing for all types of contracts for all kinds of work, supplies and services, except as provided in E-500.2 or as otherwise indicated herein. The term "financing" as used in these regulations covers Government guaranteed loans, advance payments and progress payments (not including partial payments for delivery of one or more completed units called for under a contract), necessary for both performance and termination purposes, to the extent authorized by law. Part 6 of these regulations covers the ascertainment and collection of contract debts.

E-001 Purposes. These regulations are intended to (i) state basic contract financing policy, (ii) assure proper uniformity in policies procedures and forms, (iii) provide for application of the fundamental management principle of internal check and balance, (iv) insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (v) facilitate and accelerate the making of progress payments requested by small business concerns under Government contracts, and (iv) emphasize the usefulness and desirability of providing proper contract financing assistance to small business concerns. In addition, Part 6 provides for the prompt ascertainment and timely collection of contract debts owed to the Department of Defense, provides an inducement for prompt payment by requiring the charging of interest on such indebtedness, states policies governing postponement of payments and covers compromises and other actions on certain claims pursuant to the Federal Claims Collection Act of 1966.

E-002 Application. These regulations supersede all regulations, directives, procedures and instructions inconsistent herewith. These regulations apply throughout the Department of Defense. Within these regulations, the words "Department," "Military Department," "Procuring Activity," and "Secretary," have the same meanings as those defined in 1-201.5, 1-201.6, 1-201.14 and 1-201.15.

E-003 Implementation. Changes and additions for these regulations will be developed within the Contract Finance Committee, in the manner contemplated by E-107.3 and E-218.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 1—Introduction

E-100 Scope of Part. This Part describes the methods of contract financing by guaranteed loans, advance payments and progress payments, and states basic authority and responsibilities.

E-101 Guaranteed Loans—Authority. Under Section 301(a) of the Defense Production Act of 1950, as amended, and Section 301 of Executive Order No. 10480, as amended by Executive Order No. 11062, and DoD Directive No. 5100.34, the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, among others, are designated as "guaranteeing agencies," and authorized by Section 302(a) of Executive Order No. 10480 "to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan . . . which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense."

As defined in Section 702(d) of the Defense Production Act of 1950, as amended, "the term 'national defense' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity."

E-102 Guaranteed Loans—Description. Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

E-103 Advance Payments—Authority. Advance payments on all contracts are authorized in accordance with the provisions of 10 U.S.C. 2307, as amended. When appropriate, advance payments are also authorized pursuant to the Act of August 28, 1958, as amended, "to authorize the making, amendment, and modification of contracts to facilitate the national defense" (P.L. 85-804, 72 Stat. 972, amended, by 87 Stat. 615 (1973)), Executive Order No. 10789, as amended, and Department of Defense Directive No. 7830.1. Navy advance payments for salvage operations are also authorized by 10 U.S.C. 7364. As used throughout this Appendix E, references to P.L. 85-804 shall be deemed to mean P.L. 85-804 as amended by P.L. 93-155, 87 Stat. 615 (1973).

E-104 Advance Payments—Description. Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making subadvances to subcontractors.

E-105 Progress Payments—Authority. Progress payments are authorized in accordance with the provisions of 10 U.S.C. 2307, as amended. All references throughout this Appendix E to 10 U.S.C. 2307 shall be deemed to mean 10 U.S.C. 2307 including the amendments.

E-106 Progress Payments—Description. The term "*progress payments*," as used herein, signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in these regulations this term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

E-107 Responsibilities. The following sets forth organization and responsibilities:

E-107.1 *Organization.* In terms of organization, the financing function should be separated from the procurement function, but close cooperation between the procurement and financing functions should be preserved at all times. Insofar as progress payments are concerned, it is contemplated that contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, but will otherwise participate only in specific cases involving policy questions or unusual financial arrangements and conditions.

E-107.2 *Resolution of Disagreements.* If a disagreement arises between the financing office and the interested procuring activity in any Department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the Department concerned.

E-107.3 *Responsibility—Administration—Contract Finance Committee.* The responsibility for insuring uniform administration of financing in accordance with directions shall be in the Assistant Secretary of Defense (Installations and Logistics). Specific cases need not be referred to the Office of the Assistant Secretary (Installations and Logistics), unless policy or important procedural problems are involved, and the day-to-day financing operations shall be the responsibility of the Departments.

Responsibility for financing in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function, with the focal point of such activities at Departmental headquarters although contract financing offices may be established at the operational level determined by that Department.

DEFENSE CONTRACT FINANCING REGULATIONS

There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Installations and Logistics) as Chairman, a representative of the Assistant Secretary of Defense (Comptroller) and two representatives of each Military Department and the DLA (one representing procurement and one representing the contract finance office), which Committee shall meet upon call by the Chairman, upon his initiative or when requested by a member of the Committee. This Committee shall advise and assist the Assistant Secretary of Defense (Installations and Logistics) in assuring proper and uniform application of policies and the development of procedures and forms, and may from time to time recommend to the Secretary of Defense through the Assistant Secretary of Defense (Installations and Logistics) such further policy directives on the subject of financing as may appear desirable. This Committee shall be responsible also for the formulation, revision and promulgation of uniform regulations on contract financing (E-218). For matters involving guaranteed loans, a representative of the Board of Governors of the Federal Reserve System may be invited to meet with the Committee. The Committee also may from time to time secure the advice of representatives of other branches of the Government and other persons and may invite such representatives and persons to its meetings.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 2—Basic Policies

E-200 Scope of Part. This Part sets forth basic policies applicable to guaranteed loans, advance payments, and progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the parts of these regulations relating to each method of financing. Paragraphs E-201 and E-202 also deal with other payments to contractors.

E-201 Prompt Payments. Payment must be made on all contracts when due. Undue delays by the Government in determining amounts due to contractors or in making timely payments of amounts earned by contractors would impose financing burdens on contractors and may amount to extensions of credit by contractors to the Government. Payments by prime contractors or higher tier subcontractors to subcontractors should likewise follow this prompt payment policy when payments are due under their subcontracts.

E-202 Timely Action. In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions. Likewise, with regard to other payments to contractors, not constituting contract financing, amounts properly payable to contractors must be ascertained promptly and paid expeditiously. Responsible personnel shall utilize vigorously all proper means available to them for ascertainment and payment of amounts payable to contractors as rapidly as possible. Whenever it appears that it will be necessary to provide additional funds on contracts, it is of great importance that there be appropriate early action to assure the availability of funds for payment of amounts earned by contractors. Significant examples of situations in which it is of particular importance that there be timely and effective action, and no unnecessary Government delay, include:

(i) negotiation and agreement on amounts earned by contractors (a) pursuant to change orders (see 1-201.1) or unilateral contract modifications (see 1-201.2), (b) for other equitable adjustments pursuant to contracts, (c) under contract provisions for price revision or fee adjustment, (d) under contract provisions for payment for special tooling, and (e) for final payments on contract terminations;

(ii) retroactive establishment of overhead billing rates under contracts providing for provisional overhead billing rates;

(iii) contract provision to support billing and payment for (a) cost overruns properly incurred by contractors after appropriate notice in conformity to contract provisions, and (b) spare parts deliveries effected before issuance of appropriate contract supplement;

(iv) definitization of letter contracts; and

(v) appropriate release of any withholdings deemed unnecessary on contracts where deliveries and services have been completed and amounts are being withheld pending final settlements.

E-202.1 *Supplemental Agreement.* After negotiations involving agreement on an amount to be paid to a contractor, appropriate supplemental agreement shall be prepared expeditiously and executed without delay. To the very greatest extent practicable, all such supplemental agreements and also those supplemental agreements involving refunds by contractors (E-607) shall be limited to appropriate coverage of the matters directly related and leading to the contemplated payment by or to the Government; and their preparation and issuance shall not be held up pending the consummation of agreements on other separate matters on which contract amendments are desired or contemplated.

E-203 Uniformity. Uniform financing policies and, so far as practicable, uniform procedures and standard forms are to be used by the Departments and, to the extent mutually agreed upon by the Departments, facilities and personnel are to be used in common.

E-204 Small Business. Immediate and continuing attention must be given at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small business concerns. Every reasonable effort must be made to assist small business concerns in the resolution of their problems relative to the financing of contract performance, including any cases in which it may be reasonably necessary to increase the rate for progress payments and to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting. However, the issuance of a certificate of competency by the Small Business Administration shall not be considered as a requirement that contract financing must be provided by a Department.

E-205 Purpose of Contract Financing. The providing of funds for payment of expenses of performance of contracts is an essential element of defense production. Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government, for aiding procurement by expediting performance of defense contracts and subcontracts. The contract financing system makes possible production in volume that could not be accomplished otherwise. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

E-206 Support of Procurement—Minimizing Monetary Loss. Financing must support procurement and should be designed to aid, not impede, essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement.

E-207 Reasonable Need. Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of Government contracts and subcontracts.

E-208 Working Capital Purposes. Guaranteed loans under Section 301 of the Defense Production Act of 1950, as amended, will be used primarily for working capital purposes. Such guarantee authority will not be used for loans for facilities expansion.

It is not the intent of these regulations, however, to preclude guarantees in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature; *provided*, that the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis.

Since advance payments and progress payments should be self-liquidating from contract performance, they also will not be used to finance fixed asset acquisitions for contractor ownership.

These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

E-209 Order of Preference. In determining what form of financing shall be recommended or made available to suppliers, the following order of preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

(i) private financing on reasonable terms (without governmental guarantee)—supplemented when reasonably necessary by Government financing to the extent reasonably required;
(ii) customary progress payments, as described herein (E-503) including progress payments incident to "Small Business Restricted Advertising" or incident to procurement by formal advertising, as authorized herein (E-504) except that guaranteed loans may be preferable to customary progress payments when so indicated by a contractor and financing institution; or progress payments based on a percentage or stage of completion, confined to contracts for construction (10-101.6), shipbuilding and ship conversion, alteration or repair;
(iii) guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved);
(iv) unusual progress payments, as described herein (E-505), not including contracts involving advance payments;
(v) advance payments (E-408).

E-210 Financing Not a Handicap. The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (1-903.1, 2-406, E-211, and E-212). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a Department. Responsible personnel must endeavor to assure that full, proper and prudent use is made of contract financing, in such ways that financial difficulties will not bring about delay or failure in performance or result in monetary losses to the Government. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense.

E-210.1 *Nonindication of Contract Financing Need.* Before contract awards, contractors sometimes indicate that contract financing by guaranteed loan, progress payments or advance payments will not be required. In some of those cases, the need for such contract financing later arises, usually from changed circumstances differing from those projected at the time of the award. The fact that a contractor did not indicate before award that he would require contract financing, or that he stated that he would not require such financing, does not disqualify the contractor for proper contract financing conforming to these regulations and should not be permitted to deter such financing. Each such case should be dealt with and decided on its merits, without giving weight to the contractor's earlier error with regard to the need for contract financing.

E-211 Financial Responsibility of Contractors. Procuring activities in placing contracts must give due regard to the financial capabilities of the supplier. Financial difficulties encountered by contractors and subcontractors may (i) disrupt production schedules, (ii) cause wastage of manpower and materials, and (iii) if connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors who meet the requirements of 1-903.1 or 2-406, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should be taken also to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, overextend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in 1-903.1, 2-406, or 3-101, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to apply these standards in placing subcontracts. Some practical examples of important points which should be kept in mind are set out below.

E-211.1 *Small Volume of Work.* Unduly small volume of work, in relation to amount of overhead expense, may result in losses to such extent as to interfere with or prevent performance of contracts. The order backlog on hand and reasonably foreseeable should be sufficient to enable operations to continue at least through the contemplated term of the contracts for which contract financing is being considered.

E-211.2 *Large Volume of Work.* Unduly large volume of work to be performed concurrently with a contract may result in insufficiency of cash or credit to support the work, or in delays or collapse on account of inadequacy of plant space, production equipment, engineering or production personnel, or unavailability of materials, parts or components. An apparently unduly large backlog may or may not be a deterrent, depending upon the relationship of the scheduling of all the work to the available credit, facilities, personnel, suppliers and subcontractors.

E-211.3 *Unrealistic Cost Estimates.* Incompetence, carelessness, or overoptimism of management may cause or permit the making of bids or proposals for work involving techniques, processes or "know-how" on which the contractor has no sufficient experience. Such work may be for the end items under a Government contract or for end items under other contracts (whether existing or prospective). In either case, unforeseen difficulties of performance and unanticipated excess of costs over contract prices may prove ruinous. In such cases, the proposed price, or cost estimates, whether or not based on past performance and experience of qualified competent contractors for the same or similar kinds of end items, may be unrealistic for the inexperienced contractor and may make the company's financial projections completely unrealistic. Comparative bids or proposals by others are important and useful factors in evaluation of the adequacy or inadequacy of proposed prices. However, a proposed price that seems unduly low may in fact be founded solidly on superior efficiency or on the discovery of new and improved techniques or processes that will enable the contractor to perform at costs substantially less than those of other contractors.

E-211.4 *Technical and Engineering Evaluation.* While management and technical competence must be evaluated largely on the basis of past performance of management and technical personnel, in doubtful cases financial forecasts cannot be analyzed adequately without the benefit of technical and engineering judgments based upon detailed scrutiny of the contractor's production plans and contemplated processes in relation to the quantity and quality of available facilities and personnel. However, while inexperience of the contractor in production of a contemplated end item or similar kinds of end items is a danger signal requiring close collaboration of all personnel concerned with the various elements of contract awards and contract financing, close analysis of the facts may provide sound reasons for belief that the prospective contractor, with proper and prudent contract financing assistance, will be able to perform on terms and conditions, including price, beneficial to the Government.

E-211.5 *Importance of Type of Contract—Development.* The type of contract may constitute the dividing line for decision as to ability or inability to perform and the related question of the prudence or imprudence of providing contract financing. If the contemplated end items are essentially development items—whether or not the contract is labeled a development contract—a fixed-price type of contract, whether firm fixed-price, fixed-price with economic price adjustment or fixed-price subject to price revision with a ceiling, may prove impossible of performance within the contract price and may result in nondelivery of acceptable end items and in disaster to the contractor. Except for those contractors who are exceptionally strong financially, it is imperative in these cases that financial analysis and evaluation be based upon the closest possible scrutiny by, and stated judgments of, qualified engineering and technical personnel with regard to the details and difficulties of performance and their relation to projected costs of the work.

E-211.6 *Engineering, Production and Purchase Plans.* Company plans may contemplate engineering costs, tooling costs, direct labor costs, or prices of materials, parts or components that are unduly low. Financial forecasts cannot be made intelligently or usefully without the benefit of careful and competent analysis of all significant elements of the engineering, production and purchasing aspects—by qualified technical personnel. Such analysis would need to evaluate the company's estimated costs for each significant performance element against the probable costs to be encountered for all elements necessary for actual performance. It may, for example, be foreseeable upon analysis that the company has materially underestimated the amount of engineering and testing necessary for completion of a satisfactory preproduction model, or the quantity and quality of special tooling or other manufacturing aids that may be required for production of the end items, or the amount of direct labor that will be required, or the purchase price of necessary materials, parts or components. The company may also have been in error as to the probable technical ability of contemplated subcontractors to provide acceptable parts or components. The company may even—in some cases—be expecting to have significant portions of the work done by technically or financially irresponsible subcontractors, some of whom may be affiliated with the contractor or related financially to the contractor's ownership or management. All these elements, in appropriate cases, require analysis and evaluation by competent engineering and technical personnel and bear upon the soundness or lack of soundness of the evaluations of financial capability and of the risks of monetary losses that would be involved in contract financing.

E-212 Coordination Before Contract Award. For effective application of the principles stated in E-211, each purchasing office should be staffed with, or have available and use the services of persons qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to the performance of the contemplated contract, the interested procuring activity, after having determined that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the interested Department, to determine whether financing can prudently be arranged. These contract financing offices are the Director of Contract Financing, Office of the Comptroller of the Army; the Director of Contract Financing, Office of the Comptroller of the Navy; the Assistant for Banking and Contract Financing, Office of the Assistant Secretary of the Air Force (Financial Management); and the Comptroller, Defense Logistics Agency. For other Departments (1-201.5), the contract financing office will be within the office of the Agency Comptroller. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

E-213 Financial Information and Analysis. The necessity for financial information and analysis, and the scope, depth and detail of analysis of the financial capability of contractors, for contract financing purposes, must vary reasonably with the circumstances of particular cases. The extent of accumulation of data, and the evaluation thereof, must necessarily be determined by the informed judgment of competent, responsible personnel. Essentially, this process must be neither over-done nor under-done. For example, financial analysis would serve no useful purpose in connection with provision of customary progress payments (i) for contractors who are known from experience to be so strong and so competently managed as to be fairly relied upon to perform their contracts satisfactorily, or (ii) for contractors who are known to be in satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are well within the normal sales volume of the contractor. In such cases, the financial evaluation might well consist of no more than scrutiny of readily available published balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as broad, and as meticulously and painstakingly detailed, as is necessary to fit the circumstances of the case. The obtaining of information relevant to financial capability, and the analysis and proper evaluation of that data, are of particular importance where (i) the contractor is a new supplier to the procuring activity, or (ii) the contractor has not supplied the item or a substantially similar item to the procuring activity within the preceding twelve months, or (iii) the contractor is a newly organized concern, or (iv) the contractor is on a list requiring pre-award clearances or special clearance prior to awards, or (v) the contractor is on any current list indicating current or past contract defaults or delinquencies, or (vi) the contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on either Government or commercial work, or (vii) the contractor is listed on the consolidated list of contractors indebted to the Government (Hold-Up List), or (viii) there are any known facts or circumstances which support reasonable doubts as to the contractor's financial capability of performance.

When only minimum information is reasonably necessary, such as a current balance sheet and operating statement and similar financial statements for the next preceding fiscal year, these may be either published statements, audited statements, certified statements, or any combination of those, from any convenient source.

E-214 Appropriate Information—Purposes. The kinds of information and data that *may* be appropriate under the circumstances of particular cases (E-213) for adequate disclosure of the contractor's financial condition, for full understanding of the propriety and reasonable necessity for contract financing, for evaluation of the contractor's ability to perform his contracts without loss to the Government, and for informed judgment with regard to the terms, conditions and protective provisions that *may* be appropriate and prudent for the protection of the Government, are outlined below. It is emphasized that *only* those items which *are* appropriate to the particular case will be required.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year; also a separate statement of amounts of defense and commercial sales. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and his principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of his products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or his affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with (a) above;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see E-214.1 and E-214.2);

(g) Estimated profit and loss statements and estimated balance sheets (see E-214.3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (i) loans and credits, (ii) advances and progress payments, (iii) projected equity capital increases, (iv) deferred trade credit, if any, (v) creditor subordinations or standbys, and (vi) mortgages, liens, pledges, assignments, conditional sales, lease / purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by Sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (i) leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (ii) insurance maintained and to be maintained, (iii) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (iv) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (v) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (vi) anticipated losses on contracts, (vii) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (viii) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (ix) obsolescence of inventory and method of valuing inventory, (x) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (xi) adequacy of reserves for depreciation, (xii) analysis of surplus;

(m) Significant ratios such as (i) inventory to annual sales, (ii) inventory to current assets, (iii) liquid assets to current assets, (iv) liquid assets to current liabilities, (v) current assets to current liabilities, and (vi) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this E-214. See E-211.1 to E-211.6, inclusive.

E-214.1 *Cash Flow Forecast and Estimated Financial Statements.* In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated Profit and Loss Statements and estimated Balance Sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgment as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess or projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projections readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

E-214.2 *Realistic Assumptions.* Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the—

(i) estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;

(ii) estimated amounts and timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefor;
(iii) schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;
(iv) projected manufacturing and production schedules;
(v) projected shipments, or delivery acceptances;
(vi) estimated amounts and timing of billings to customers (including progress payments), and customer payments;
(vii) estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and
(viii) estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

E-214.3 *Estimated Profit and Loss Statements and Balance Sheets.* The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated profit and loss statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated profit and loss statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

The interrelationship between the cash budget, estimated profit and loss statement and estimated balance sheet, covering a given period, is illustrated in charts 1 and 2.

E-215 Termination Financing. It is recognized that adequate protection against the financial impact of termination of Government contracts and subcontracts should encourage suppliers to invest their own funds in performance under such contracts and that financing for termination purposes will be an important aid to ultimate reconversion of industry to peacetime activities. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing.

E-216 Report of Adverse Developments—Prompt Decisions. When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring or contract administration activity, pertinent facts, including report of remedial or protective action taken or proposed, should be reported by the procuring or contract administration activity to the contract financing office of the Department principally concerned with the contract financing, so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. However, the filing of such reports shall not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government. When there are reasons to doubt the prudence of continuing progress payments or advance payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

E-217 **Reports.** Each Department shall submit reports of financing activities at such times and in such form as may be prescribed by the Assistant Secretary of Defense (Installations and Logistics) and approved by or for the Assistant Secretary of Defense (Comptroller).

E-218 **Deviations—Amendments.** Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with or varying from these regulations would be deviations. Deviations will be permitted only when necessary in exceptional circumstances, after (i) the proposed deviation has been presented to the Contract Finance Committee, (ii) the recommendations of that Committee have been obtained, and (iii) the approval of the Assistant Secretary of Defense (Installations and Logistics) or his designated representative has been given. The above procedure will be followed also for amendments to these regulations (see E-003). The provisions of the Armed Services Procurement Regulation pertaining to deviations (1-109.2 and 1-109.3) and to amendments (1-105) do not apply to these contract financing regulations.

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PROJECTION OF FINANCIAL STATEMENTS

Chart No.1

Profit and Loss Projection	1st mo.	2d mo.	3d mo.	Totals
Net Sales	123			
Materials Used	42			
Direct Labor	31			
Mfg. Exp	32			
Cost of Goods Sold	105-			
Gross Profit	18			
G & A Exp	10			
Operating Profit	8			
Income Tax Provision	4			
Net Profit	4			

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Cash Projection	1st mo.	2d mo.	3d mo.	Totals
Cash Balance (Opening)	78			
Receivable Collections	112			
Progress Payments Received	30			
Bank Loan Proceeds	100			
Total Proceeds	320			
Trade Payables Paid	76			
Direct Labor Paid	31			
Mfg. Exp. Paid	35			
G & A Exp. Paid	9			
Payment on Long Term Debt	2			
Fixed Asset Addition	4			
Income Taxes Paid	11			
Progress Payments Repaid	24			
Bank Loan Repayment	66			
Total Disbursements	258			
Cash Balance (Closing)	62			

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Balance Sheet Projection	Beginning	1st mo.	2d mo.	3d mo.	Totals
Assets					
Cash	78	62			
Receivables	186	199			
Inventory	306	308			
Current Assets	572	569			
Fixed Assets (Net)	53	56			
Deferred Charges	27	25			
Total Assets	652	650			
Liabilities					
Notes Payable—Banks	150	184			
Progress Payments Outstanding	56	62			
Trade Payables	102	71			
Income Tax	45	38			
Accruals	30	24			
Current Liabilities	383	379			
Long Term Debt	62	60			
Capital Stock	153	153			
Surplus	54	58			
Total Liabilities and Net Worth	652	650			
Working Capital	189	190			

INTERRELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS

Chart No. 2

	Bal. Sheet (Beginning)	Cash Flow		Profit and Loss		Bal. Sheet (Ending)	Net Changes
		DR	CR	DR	CR		
ASSETS:							
Cash	78		16			62	(16)
Receivables	188		112	123		199	11
Inventory	306			Purchases 45 Dir. Labor & Mfg. Exp. Incurred 62	42 Mat. Used 31 Dir. Labor 32 Mfg. Exp. Applied	308	2
Current Assets	572		128	230	105	569	(3)
Fixed Assets	53	4			1 Depr. (G & A)	56	3
Deferred Charges	27				2 G & A Exp.	25	(2)
Total Assets	652	4	128	230	108	650	(2)
LIABILITIES:							
Notes Payable—Banks	150	66	100			184	34
Progress Payments	56	24	30			62	6
Trade Payables	102	76			45 Purchases	71	(31)
Income Tax	45	11			4	38	(7)
Accruals	30	Paid: Dir. Labor 31 Mfg. Exp. 35 G & A Exp. 9			62 Dir. Labor & Mfg. Exp. Incurred 7 G & A Exp.	24	(6)
Current Liabilities	383	252	130		118	379	(4)
Long Term Debt	62	2				60	(2)
Capital Stock	153					153	
Surplus	54				4	58	4
Total Liabilities and Net Worth	652	254	130		122	650	(2)

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E-219 Interpretations. It is important that these regulations and the clauses set forth herein be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of these regulations arises within a procuring activity, and is regarded as being of general importance, if the circumstances reasonably permit the obtaining of an advance opinion on the question from Departmental headquarters, the question should be presented, through procurement channels, to the procurement policy office at headquarters of the Department primarily interested. If the circumstances do not reasonably permit request for advance opinion, report of an interpretation made (if regarded as important and of general interest for uniform application or interpretation of these regulations) should be made to the appropriate one of the Departmental headquarters procurement policy offices. Those offices are expected to take appropriate and timely action to obtain the views of interested offices of the other Departments, including the contract financing offices (E-212). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of these regulations, appropriate revision of these regulations, will be considered in the manner outlined in E-003. In periods between any amendments of these regulations, it is contemplated that information on important interpretations of general interest, reported to or made at Departmental headquarters, will be made available to procuring activities for dissemination to interested purchasing offices.

E-220 Foreign Procurement. These regulations apply equally to domestic and foreign procurement, with the exceptions and qualifications stated below. The enforceability of a contract provision in a foreign jurisdiction is dependent on local law and procedure. It may sometimes become necessary to take action in foreign countries to enforce collateral security or other contract financing protective provisions, or to recover property pursuant to a progress payment clause, and to collect contract financing indebtedness. In such cases, the nature and extent of remedies available for enforcement of contract provisions is necessarily determined by the laws, rules and procedures of the country in which the relief is sought.

E-220.1 *Progress Payments on Contracts for Foreign Performance.* When progress payments (Part 5) are contemplated for contracts to be performed wholly or partly in a foreign country, appropriate legal advice should be obtained with respect to the validity, enforceability and effectiveness of the contemplated progress payment clause (See 7-104.35(a) or (b) and E-511) and of any proposed guarantees, pledges or other special protective arrangements, within the foreign country involved. Such legal advice should also cover the need, if any, for additional protective provisions (E-511.5) or for deviations (E-509.9) from the uniform clauses, that may be required to comply with the applicable foreign law and to provide for the most effective protection and enforcement of the interests of the United States. Paragraph E-517 requires that proposed deviations (E-509.9) must have prior approval of the contract financing office (E-212) after the coordination mentioned in E-518.

E-220.2 *Advance Payments on Contracts for Foreign Performance.* When advance payments are proposed (Part 4) for contracts to be performed wholly or partly in a foreign country, the recommendation (E-412) for advance payments should include appropriate legal advice along the lines of that outlined in E-220.1. When advance payments are proposed to be made on contracts with foreign governments, it is expected that the advance payment arrangement, if approved (E-406), would not include provisions generally unsuitable for government-to-government agreements, such as those for special bank accounts, unilateral withdrawal of funds, liens, insurance, additional security, or representations, warranties and covenants of the kinds set forth in paragraphs (16) and (18) of the clause in 7-104.34. It is recognized that advance payments to foreign governments, when authorized, will need to be adapted to the special circumstances of each case to provide appropriate protection in the light of the relationship of the United States to each affected foreign government and with due recognition of the sovereign status of the contracting parties.

E-220.3 *Guaranteed Loans for Foreign Contract Performance.* When contracts or subcontracts are to be performed in a foreign country, financing by means of loans guaranteed by the Departments seldom will be practicable because of difficulties of loan administration and enforcement. When loans are to be utilized for financing of such contracts or subcontracts, it is considered generally preferable that the loans be provided within the internal financial system of the foreign country concerned, without Department guarantee.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 3—Guaranteed Loans

E-300 Scope of Part. This Part covers the policies, organization, and procedure particularly applicable to guaranteed loans.

E-301 Federal Reserve Banks. Under Section 302(b) of Executive Order No. 10480, pursuant to Section 301(b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of Section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

E-302 Board of Governors of the Federal Reserve System. Under Section 302(c) of Executive Order No. 10480, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Board of Governors of the Federal Reserve System (hereinafter referred to as "Federal Reserve Board"). The Federal Reserve Board is authorized, after consultation with the heads of the guaranteeing agencies, (i) to prescribe such regulations governing the actions and operations of fiscal agents as it may deem necessary, (ii) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (iii) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

E-303 Procedure on Application of a Private Financing Institution. A defense contractor or subcontractor (at any level) or supplier, who requires operating funds may apply to the private financing institution selected by him, for the necessary loan or revolving credit, and furnish necessary information to the financing institution. If the financing institution is willing to extend credit, but considers Government guarantee necessary, it may file application for guarantee with the Federal Reserve Bank of its district. The Federal Reserve Bank promptly submits copy of the application to the Federal Reserve Board listing defense contracts, for transmittal to the interested guaranteeing agency, so that determination may be made as to eligibility of the prospective borrower. For the purpose of expediting, the Federal Reserve Bank may also, pursuant to general instructions of the guaranteeing agencies, submit schedules of defense contracts to the interested contracting officers, who are expected at once to take appropriate steps for determination of eligibility, and to submit their findings and report, including certificate of eligibility where appropriate, to the designated central procurement office, or contract financing office as the case may be, within the guaranteeing agency. Concurrently with the process for determination of eligibility, the Federal

Reserve Bank makes any necessary credit investigation, to the extent and in the manner that it considers investigation or verification appropriate to supplement information furnished by the applicant financing institution, all with a view to expediting necessary defense financing in such a way as to afford the best reasonable protection against monetary loss. The report and recommendation of the Federal Reserve Bank are sent to the Federal Reserve Board, which transmits them to the interested guaranteeing agency, in Washington. If the application is approved on such terms and conditions as may be deemed appropriate by the responsible officer or official within the guaranteeing agency, the guaranteeing agency then authorizes the Federal Reserve Bank, by standard form of authorization transmitted through the Federal Reserve Board, to execute and deliver to the financing institution a standard form of guarantee agreement (of which sample copy is attached hereto, as Annex I), with the terms and conditions approved for the particular case. The Federal Reserve Bank, as fiscal agent for the guaranteeing agency, then issues the guarantee to the financing institution which makes the loan. Substantially the same procedure may be followed on application for guarantee of loans to be made to a potential defense contractor who is actively negotiating or bidding for defense business, except that the guarantee is not authorized until the prospective defense contract has been executed.

E-304 Loan Guarantees to Other Government Agencies. Loan guarantees are not issued to other Departments or Agencies of the Government.

E-305 Loan Guarantees for Terminated Contracts. Guaranteed loans ordinarily provide for financing based on the borrower's recoverable investment in defense production contracts, including those contracts which have been terminated for the convenience of the Government. Guaranteed loans also may be established after total or partial termination of contracts for the convenience of the Government, or before such termination when it is known that termination of particular contracts for the convenience of the Government is about to occur. Such guaranteed loans are expected to provide necessary financing pending termination settlements and payments, and also to provide any funds necessary for continuing performance of defense production contracts that are eligible for financing under the guaranteed loan.

The procedure on applications for such guarantees will be substantially the same as that outlined in E-303, except that certificates of eligibility (E-314, E-315—E-315.11) will not be required for contracts which have been wholly terminated, nor for the terminated portion of contracts which have been partially terminated. It is of course expected that necessary precautions, appropriate to the circumstances of individual cases, will be taken, as in other cases, to avoid losses and to cause such loans to be self-liquidating from the proceeds of defense production contracts. This type of loan guarantee, intended primarily for contract termination financing, is not provided before the imminence of particular contract terminations, for the reasons outlined in E-313.2. Further reasons include the difficulty of determining whether contract terminations will occur in the future and will require guaranteed loan financing, and the expense and administrative burden that would be involved in establishing commitments which may in fact never be used.

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E–306 Guaranteeing Agency. Where a prospective borrower under a V-loan has defense contracts or subcontracts in which more than one of the guaranteeing agencies are interested, the guaranteeing agency in such case will be in general that agency which, as of the time of the application for the guarantee, has the preponderance of interest in such contracts and subcontracts on the basis of the dollar amount of the prospective borrower's unfilled and unpaid balances of such contracts and subcontracts and estimated claims under terminated contracts (exclusive of contracts with advance payments, if such advance payments are not to be liquidated by the proposed guaranteed loan). If the application is approved and a guarantee agreement is executed on behalf of such agency having the preponderance of interest, that agency will bear all losses and expenses and receive all revenues under such guarantee without allocation to other agencies of the Government. In this connection, among the Military Departments (1–201.5), single service procurement contracts are deemed those of the purchasing department. In exceptional cases, one Department may act for others, and sharing arrangements are permitted.

E–306.1 *Effect on Preponderance of Progress Payments or Denial of Certificate of Eligibility.* Among the Departments, the determination of preponderance of interest, under E–306, is made without regard to the existence of progress payments on particular contracts, and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts.

E–306.2 *Shifting of Preponderance.* During the course of a guaranteed loan, preponderance of interest in the borrower's defense production contracts may shift from one of the Departments, as guaranteeing agency, to another Department. When such preponderance has shifted materially so that substantial preponderance is in one of the Departments other than the guaranteeing agency, action on requests for increases in the amount of guaranteed loans, and on requests for extension of maturity for a period of more than six months, ordinarily will be taken by the Department then having such preponderance of interest. However, in the above situation, action will be taken by the Department which has guaranteed the loan, if the loan is in distress, with fairly foreseeable losses, and the requested extension or increase is for the purpose of orderly liquidation of the loan in a manner designed to reduce the amount of the loss. If such a loan is not in distress, and losses are not fairly foreseeable, and the greater part of the borrower's defense production contracts are determined to be eligible for a continuing guaranteed loan, and the circumstances of the case are such that favorable action would have been taken by the then guaranteeing agency if it had remained preponderantly interested in the borrower's defense production contracts, similar favorable action will be taken by the Department then having such preponderance of interest. In these cases, while new application for guarantee is required, the file of the contract financing office which has authorized the existing guarantee will be transferred to the contract financing office of the Department then having preponderant interest in the case, and the information to be submitted with the application need be only current financial information, data concerning the borrower's defense production contracts, and other pertinent facts concerning the borrower and his operations, to the extent necessary to supplement and bring up to date the information previously furnished to the guarantor. In order not to disturb or impair any security for the existing loan, and for the convenience of all concerned, it is preferable that the new guarantee merely replace the former guarantee, with appropriate recitals as to cancellation of the former guarantee, and with appropriate revision of the existing loan agreement and of such collateral security instruments as may require revision.

E-307 One-hundred Percent Guarantees. It is the policy of the guaranteeing agencies that 100 percent guarantees shall be limited to the greatest extent compatible with the requirements of the national defense. Applications for 100 percent guarantees will be approved only in cases in which the guaranteeing agency determines that the circumstances are exceptional, that the operations of the borrower are vital to the national defense, and that no other suitable means of financing are available.

E-308 Asset Formula. It is the policy of the guaranteeing agencies that borrowings under guaranteed loans made primarily for working capital purposes should be limited, in accordance with an asset formula, to amounts which do not exceed specified percentages (90 percent or less) of the borrower's investment in defense production contracts. The formula may include all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but would not include any amounts (for which no work has been done nor expenditures made by the borrower) to become due as the result of later performance under the borrower's contracts. However, any such asset formula would be subject to relaxation in appropriate cases to the extent and for the time actually necessary for contract performance where the contractor's working capital and credit are inadequate. This "asset formula" does not include "cash collateral" or bank deposit balances. When progress payments are involved, they are deducted last, to produce a safer borrowing base.

E-309 Amount and Maturity of Guaranteed Loans. Under the provisions of Section 301 of the Defense Production Act as amended, the maximum obligation of any guaranteeing agency under any loan, discount or advance, or commitment in connection therewith, entered into under such Section 301, shall not exceed $20,000,000. Accordingly, the maximum amount of the credit to be guaranteed must not be equal to or greater than an amount which under the Government guarantee could result in an obligation to the guaranteeing agency in excess of $20,000,000. Subject to the limitations of the asset formula (E-308), the maximum amount of guaranteed credit in individual cases and the maturity date of guaranteed loans or credits, are fixed to conform reasonably to the borrower's financing requirements for defense production contracts on hand at the time of application for guarantee. If additional defense production contracts are entered into after the application and before authorization of a guarantee, to such extent as to require increase in the maximum amount, or longer maturity for the requested guaranteed loan, adjustments may be made to provide for the borrower's additional financing requirements. Also, guarantee agreements for existing guaranteed loans may be amended, on submission of pertinent information and Federal Reserve Bank report to the guaranteeing agency concerned, to provide financing for defense production contracts entered into by the borrower during the term of the guaranteed loan.

Also, within the limits of the applicable loan formula and ceiling amount, there is generally no objection to inclusion in the borrowing base, of assets under defense production contracts entered into after the date of the guarantee agreement. However, in exceptionally weak cases, and in the cases of guaranteed loans established for financing only one or a small number of contracts, it is the practice to require that financing of relatively substantial additional defense contracts under existing guaranteed loans be done only with the consent of the guarantor.

Where guarantee agreements are amended to provide financing for contracts entered into by the borrower during the term of the guaranteed loan, a new certificate of eligibility will normally be required. It is not the policy of the Department of Defense to continue furnishing assistance in the form of guaranteed loans over an extended period of time except in cases where it is reasonably necessary to do so to obtain the required products.

E-310 Assignments of Claims Under Contracts. Assignments of claims under the borrower's defense production contracts are generally required, including assignment of proceeds of such contracts entered into after issuance of the guarantee if after acquired contracts are eligible for financing under the guaranteed loan in a given case. However, assignments need not be required in particular cases, (i) where the borrower's financial condition is so strong as to cause assignments of any contracts to be considered not necessary for the protection of the loan, or (ii) where incident to assignment of major contracts it is considered not necessary for the protection of the loan to require initial assignment of relatively small contracts, or (iii) where the large number of contracts of the borrower for small dollar amounts, would cause the making and administration of contract assignments to be unduly burdensome and inconvenient so long as not deemed essential for the protection of the loan.

E-310.1 It is required, as standard practice, that defense production contracts, not theretofore assigned, will be assigned whenever requested by the guarantor or the financing institution.

E-310.2 Subcontracts and purchase orders issued to subcontractors are not considered acceptable for financing under guaranteed loans if and so long as the issuer of the subcontracts or purchase orders (i) reserves the privilege of making payments directly to the assignor or to the assignor and assignee jointly after notice of the assignment, or (ii) reserves the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense production contracts under which the borrower is the seller.

E-311 Other Collateral Security. Ordinarily, mortgages on fixed assets are not required, but they are required where considered essential to protect the Government. Liens or other security arrangements pertaining to inventories are also seldom required, except when desired by financing institutions or in exceptional circumstances when deemed necessary to protect the Government. Depending upon the circumstances of individual cases, endorsements, guarantees, subordinations, and standbys of other indebtedness, and other special security devices are required when deemed necessary for the protection of the Government.

E-312 Contract Surety Bonds in Relation to Loan Guarantees. In most jurisdictions, upon default by a contractor and performance of the surety's obligations, the surety's right of subrogation gives to the surety, ahead of a financing institution which had made a loan for contract performance, prior claim to payments made on the bonded contract after default, and in performance of his obligations the surety also has the benefit of materials on hand that have been paid for by the contractor, even though progress on the contract before default has been financed by loans from the financing institution.

E-312.1 Because of the foregoing, on loan guarantees in connection with prime contracts, the guarantor's loss on the loan, payable to the financing institution, may serve to take away from the Government the benefit of performance of the surety's obligations on his bond; and in subcontract cases the loan may serve to benefit the surety at the expense of the financing institution and guarantor.

E-312.2 Except to the extent that surety bonds are required by law, bonds are generally not required. Yet it sometimes may be necessary to rely upon a contractor whose capacity to perform is so doubtful that a bond is required for the protection of the Government. The guarantee of a loan to a contractor of such doubtful capacity to perform necessarily involves unusual risks of monetary loss. Contract surety bonds, and guaranteed loans for financing bonded contracts are regarded as fundamentally incompatible unless the interests of the surety are subordinated in favor of the guaranteed loan.

E-312.3 In order to maintain the advantages of performance bonds existing in favor of the Government on prime contracts, in cases where the Government contract or contracts covered by surety bonds are substantial in relation to the contractor's total backlog of defense production contracts or where the amount of the bond is substantial in relation to the contractor's net worth, applications for loan guarantees are approved only if the surety or sureties on the bonds involved will subordinate their rights and claims in favor of the guaranteed loan.

E-312.4 In cases involving relatively substantial subcontracts covered by surety bonds, approval of an application for loan guarantee will also be contingent upon the establishment of a reasonable allocation agreement between the surety or sureties and the financing institution, which would have the effect of giving the financing institution the benefit, with regard to payments to be made on the contract, of that portion of its loans fairly attributable to expenditures made under the bonded subcontracts prior to notice of default.

E-313 Other Borrowings. Since V-loans are generally measured, and limited by, stated percentages of the borrower's investment in defense production operations and terminated defense contracts, it is evident that borrowings outside the guarantee may be necessary in some cases to support the borrower's nondefense activities. It has been recognized in practice, that while prohibition of borrowings outside the guaranteed loan is preferable where practicable in a given V-loan case, such other borrowings should be permitted when necessary.

E-313.1 However, in cases where borrowings outside the V-loan are not prohibited, some restrictions on unguaranteed borrowings appear necessary for protection of the Government interest. These include reasonable limitations on the amount of, and collateral security for, such unguaranteed borrowings, and usually a provision that collateral security, if any, for such unguaranteed loans made by the same financing institutions should also be secondary collateral for the Vtloan.

E-313.2 If a credit is to be guaranteed under Section 301 of the Defense Production Act, in circumstances where there may be borrowings either under or outside the guarantee, the guaranteed credit, having been established, and being susceptible to use at any time, should be utilized first and fully, and not reserved as free insurance pending such time and circumstances as may make its use convenient to the financing institution. It has therefore been determined, in line with the practice developed toward the end of the past war, that for those cases in which borrowings outside the V-loan are not prohibited, it should be required uniformly that other borrowings outside the V-loan may be incurred and remain outstanding without the consent of the financing institution and the guarantor only when the V-loan is being used to the full extent permitted by the V-loan agreement. Appropriate certificates of the borrower, in the same form as those used to measure the amount that may be outstanding under the V-loan, but submitted at intervals not longer than 30 days, could be used to determine when there may be borrowings outstanding outside the V-loan.

E-313.3 It is of course recognized that appropriate exceptions will have to be made in individual cases to permit the continuation of outstanding term loans, to permit future unguaranteed term loans for expansion of facilities, and to permit continuance of such financing as may be necessary to supplement a V-loan.

E-314 Eligibility Certifications. Financing through guaranteed loans may be made available to a supplier in cases where (i) the production or service is essential and (ii) no alternative source is readily available without prejudice to the national defense. However, in connection with applications for guarantees or loans to be made to small business concerns, and in connection with increases or extensions of maturities of guaranteed loans made to small business concerns, and if they otherwise qualify, the factor of ready availability of alternative sources will not be considered, and the statement that the contracts or subcontracts involved cover materials or services which cannot be procured readily from an alternative source without prejudice to the national defense will be omitted from the certificate of eligibility. When financing through loan guarantees is requested, the interested procuring activity shall certify that the case meets the requirements set forth in this paragraph, and shall accompany such certification with adequate supporting data pertinent to the case.

E-314.1 *Certificate of Eligibility.* The certificates of eligibility and supporting data furnished by principally interested procuring activities, are the basis for the ultimate findings, incident to authorization or approval of loan guarantees, that the case meets the requirements of Section 301 of the Defense Production Act of 1950, as amended, and of Section 302 of Executive Order No. 10480.

In its present form this certificate includes findings that the materials or services involved are deemed essential to the national defense, that (except for small business concerns) these cannot be procured readily from an alternative source without prejudice to the national defense, and that the contractor has the technical ability and the required facilities to perform. It is required that supporting data be contained in or accompany the certificate. It has been provided on the approved form of certificate, as the standard for guidance in considering issuance of certificates of eligibility, that:

This is not intended as a statement that there is absolutely no alternative source other than this contractor. The certification is founded on practical considerations. These considerations include the urgency of supply schedules, technical and plant capacity and unwillingness of other suppliers, time and expense involved in reletting all or parts of contracts (including expense of terminations for convenience, and delays incident to future determinations of default), comparative prices, effect of interruptions of established subcontracting arrangements, and other pertinent practical factors. (MAY 1959)

E–315 Procedure for Certificate of Eligibility. It is important that the processing of certificates of eligibility be accomplished expeditiously. It is necessary that there be application of uniform and consistent standards in determining eligibility.

E–315.1 As indicated in E–314.1, the determination in the certificate of eligibility is based upon giving full weight to practical considerations. It is also intended that in determining whether the materials or services can be procured readily from an alternative source without prejudice to the national defense, due consideration will be given to the effect of the use of alternative sources on established major policies affecting procurement, such as those relating to the mobilization base. If the reletting of contracts with other sources would involve conflict with any of such policies, such reletting in conflict with any such policy should be deemed prejudicial to the national defense. Also, in considering the practicability of alternative sources, in addition to the considerations outlined above, regard should be given to the question whether such potential alternate sources would require Government financing by progress payments, or advance payments, or Government supported financing by means of a guaranteed loan. If such financing would be required for alternative sources, such alternate sources may be fairly considered not "readily available" within the meaning of the certificate of eligibility.

E–315.2 Ordinarily, if the certificate of eligibility is not issued by the interested procuring activity, it does not follow that the contract involved will be terminated unless the contractor is in default to the extent that termination for default is considered desirable, or unless it has been determined that the contractor will be unable to perform his contract. Thus, in determining whether alternate sources are readily available without prejudice to the national defense, consideration should be given to the effect on supply schedules, and costs to the Government, if the contractor should default at a later date and be unable to perform by reason of inadequate financing.

E–315.3 In determining eligibility of small business concerns, the factor of ready availability of alternative sources will not be considered, and the paragraph of the form of certificate of eligibility pertaining to alternative sources will be deleted in cases of small business concerns. In such cases the fact that the particular items or services involved are being procured under or pursuant to a contract of a Military Department is considered adequate to support and require the finding that the materials or services involved are deemed essential to the national defense. However, this does not mean that the certificate of eligibility should be provided automatically for small business concerns, or that any less care and diligence should be exercised for determining eligibility for small business cases than for other cases. See E–315.4.

E-315.4 It is necessary in all cases, whether or not involving a small business concern, that, in considering issuance of a certificate of eligibility, emphasis be placed on the factors of the contractor's technical ability, management competence and reliability, plant capacity and facilities, and generally on his ability to perform satisfactorily if adequate financing is provided. If these factors are not favorable, the certificate of eligibility should not be issued. See E-210 and E-211.

E-315.5 With regard to contracts existing at the time of request for the certificate of eligibility, the percentage of guarantee requested by a financing institution is not a factor to be considered in connection with issuance of the certificate.

E-315.6 In all cases, the supporting data furnished to the contract financing office should be sufficient to support the findings made in the certificate of eligibility. This data should contain available information pertinent to the matter of ability to perform satisfactorily, including known information as to past performance and available information on the relation of the contractor's operations to supply schedules, and available pertinent information on other practical factors such as comparative prices and the time and expense that would be involved if reletting the contracts should become necessary (E-214 does not apply). All of this information, including particularly an indication as to whether or not the contractor is considered an important source for materials or services, is necessary and important for consideration by the contract financing offices in determining the ultimate question whether, on their evaluation of all the circumstances of particular cases (including the contractor's financial condition and financial record), the authorization of a guarantee would be prudent and in the best interest of the Government. When the certificate of eligibility is not furnished, the facts and reasons leading to declination of the certificate should be furnished.

E-315.7 In those cases of subcontracts, where the prospective borrower is financially weak in relation to the financial condition of his defense contract customer, and the interests of the Government would be fostered by the making of progress payments to the subcontractor by his customer, it is appropriate that steps be taken, by coordinated effort of the procuring activity and the contract financing office, to arrange to the extent practicable for such progress payments to the subcontractor by his customer. By such means, in appropriate cases, the guaranteed loan may become unnecessary, or necessary in lesser amount, and the risks of loss are borne wholly or partly by the prime contractor or subcontractor responsible for selection of the prospective borrower as his subcontractor.

E-315.8 If materially adverse information of any character concerning the prospective borrower is known to a procuring activity, such materially adverse information should be fully reported to the interested contract financing office. However, procuring activities are not expected to make any special investigation of the prospective borrower's financial condition in connection with applications for loan guarantees, as reports concerning financial condition of prospective borrowers are made by the Federal Reserve Banks.

E-315.9 When certificates of eligibility are requested within a Department, or by one Department from another Department, reply will be made as promptly as possible, on a priority basis, as delays in financing may retard contract performance. Ordinarily, requests for certificates of eligibility, and pertinent data, will be made only with respect to those contracts deemed of material consequence under the circumstances of particular cases.

E-315.10 In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

E-315.11 When a contracting officer or other person within a procuring activity responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

Part 4—Advance Payments

E-400 Scope of Parts—References. This Part covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in E-419. It is to be applied in conformity to the policies stated in Part 2. Paragraphs E-000, E-001, E-002, E-003, E-100, E-103, E-104, E-107.2, and E-107.3 are also applicable to advance payments.

E-400.1 *Advance Payments on Subcontracts.* The policies, standards and procedures of this Part 4 are applicable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to these regulations, with appropriate provision for advance payments by the prime contractor to subcontractors or suppliers. See paragraph (17) of the clause in 7-104.34.

E-401 Types of Contracts That May Have Advance Payments. Advance payments may be made on any approved type of contract as defined in 1-201.4.

E-402 Advance Payments in Addition to Progress Payments. Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See E-508.

E-403 Interest.

(a) Interest will be charged on all advance payments hereafter authorized at either (i) the published prime rate of the banking institution (Depository) in which the special bank account (E-413) is established, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater. It will be a floating interest rate (non-fixed) depending on the prime rate of the Depository which is subject to fluctuations and the semiannual determination by the Secretary of the Treasury under Public Law 92-41. The prime rate and the changes therein during the month will be obtained from the Depository on the last business day of each month. Interest will be computed at the end of each month upon the daily unliquidated balance of advance payments at the applicable daily interest rate. However, advance payments may be approved without interest when in connection with (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work; (ii) nonprofit contracts in the dependents' medical care program; (iii) contracts solely for the management and operation of Government-owned plants; (iv) cost type contracts with governments or instrumentalities thereof; or (v) unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the comptroller function. In this connection, contracts for acquisition of facilities at cost, for

Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments hereafter authorized should provide that the contractor will charge interest in accordance with the above paragraph on advances to subcontractors, and that interest charged on such will be credited to the account of the Government. However, interest need not be charged on advances on cost-reimbursement contracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as cost under any cost-reimbursement contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide for allowance of such interest as an item of cost.

E-404 Standards—Amounts—Need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work, and (ii) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

E-405 Statutory Requirements. The authorizing statutes (E-103) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

(i) the contractor give adequate security (E-413);

(ii) the advance payments shall not exceed the unpaid contract price;

(iii) the making of advance payments is in the public interest, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to the authority of Title 10 U.S.C. Section 2307;

(iv) the making of advance payments will facilitate the national defense, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to P.L. 85-804, and Executive Order No. 10789; and

(v) a provision providing for such payments where it is estimated that it will result at some time in unliquidated advance payments exceeding $25 million; such a provision shall not be inserted in any contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.

E-406 Responsibility—Delegation of Authority. Except as provided in E-406.1, the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. However, no agreement for advance payments shall be entered into by any such designated authorities without the prior written coordination of the Office of the Director of Defense Research and Engineering if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000. The Government may not be committed, in any manner directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with E-406.1), and no procurement involving advance payments may become final until such approval is obtained.

E-406.1 *Delegation of Authority.* The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army; to the Director of Contract Financing (and an alternate within his office) in the Department of the Navy; to the Assistant for Banking and Contract Financing, Office of the Assistant Secretary of the Air Force (Financial Management); and to the Comptroller, Defense Logistics Agency, or an alternate responsible to him. For other Departments (1-201.5), this delegation of advance payment authority may be only to the Comptroller of the Agency, or an alternate responsible to him. However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Director of Defense Research and Engineering.

E-407 Public Law 85-804—Formally Advertised Contracts.

(a) Pursuant to Public Law 85-804, and Executive Order No. 10789, as amended, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments. No contract or amendment or modification of any contract shall be entered into under the authority of this Act which would provide for unliquidated advance payments in an amount in excess of $25,000,000, unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. Furthermore, no agreement for advance payments shall be entered into by any officials of the above designated Departments under the authority of this Public Law without the prior written coordination of the Office of the Under Secretary of Defense Research and Engineering if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for unusual progress or advance payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

(b) Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition, qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (i) the award may be made with provision for advance payments, in conformity with these regulations, or (ii) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (iii) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

E-407.1 *Special Contract Provisions.* All contracts providing for advance payments under the authority of the above-cited Act (Public Law 85-804) and Executive Order shall:

(i) make reference to the Act and Executive Order; and

(ii) include appropriate clauses required by the Act and Executive Order (17-102), or by other applicable regulations. See 7-104.15 and 7-402.7.

E-407.2 *Data.* Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (Public Law 85-804) and Executive Order.

E-408 Uses of Advance Payments. Advance payments are last in the general order of preferences stated in E-209. Subject to the provisions of these regulations, advance payments are considered useful and appropriate for (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work (E-404); (ii) contracts solely for the management and operation of Government-owned plants (E-404); (iii) contracts for acquisition of Government production and research property under facilities contracts (see 13-101.11); (iv) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan; (v) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract; (vi) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned; (vii) contracts for the financing of which a financing institution will not (A) assume a reasonable portion of the risks under a guaranteed loan, or (B) provide funds except at excessive interest rates or other exorbitant charges; and (viii) exceptional cases in which the utilization of advance payments will be more beneficial to the interest of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small business concerns, in which advance payments will be more beneficial to the interest of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

E–409 Standards for Advance Payment Determinations—All Contracts. It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this paragraph and E–202 through E–212, E–404, E–405, E–407, and E–408. Affirmative recommendations should be made in favor of granting advance payments when (i) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (ii) the contractor or prospective contractor is otherwise qualified as a responsible contractor (1–903.1, 2–407, E–211), (iii) there will be a benefit to the Government from performance prospects or other practical advantages, and (iv) the case is within one or more of the categories described in E–408. These recommendations should be approved unless the responsible contract financing office (E–212), or the Under or Assistant Secretary or other official concerned (E–406 and E–406.1), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to these regulations.

E–410 Findings, Determinations, and Authorization. The following is the standard text of findings, determinations, and authorization (E–412(vi)) for use in establishing advance payments.

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

(DEC. 1980)

1. I hereby find that:

a. The .... (*Procuring Activity*) and .... (*Contractor*) (propose to enter) into negotiated (formally advertised) Contract No. ...., (dated ....).

Summary of the specific facts and significant circumstances concerning the contract and Contractor, which, together with the other findings, will clearly support the determinations below.]

b. Advance payments (in an amount not to exceed $................................ at any time outstanding) (in aggregate amount not exceeding $................................, less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of d. above.]

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor, and the United States will have a paramount lien upon (1) any supplies contracted for and (2) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the Contractor, and the amount designated above is predicted upon the use of the Contractor's own working capital to the extent possible in performing the contract.

f. The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the Contractor without interest:

[*Recitation of pertinent facts and circumstances*]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41; 85 STAT 97 , on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $................., are hereby authorized pursuant to (10 U.S.C. 2307, as amended) (The Act of August 28, 1958, as amended, Public Law 85–804, 72 Stat. 972, amended by 87 Stat. 615 (1973), and Executive Order No. 10789, as amended), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. .... are hereby superseded.)

....................(*Name typed*)
....................(*Title of authorized official*)

Instructions:

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (E–406), by such office as may be designated by the procedures of each Department. It will include such of the paragraphs set out above as are appropriate. (See below.)

2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will *not* be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.

3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e will not be included in the case of cost type contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g., or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

E-411 Application for Advance Payment. The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by—

(i) Cash flow forecast (E-214(f), E-214.1, E-214.2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in E-408(i) or E-408(ii));

(ii) Proposed amount of advance payments;

(iii) Name and address of bank suggested as depository for the advance payment special account (this item is not applicable where the alternate method of advance payments under E-413.1 below is to be used);

(iv) Except for contracts mentioned in E-408(i) and E-408(ii), description of efforts made to obtain private financing, including guaranteed loan; and

(v) Such other information and data (E-214) as may be appropriate under the circumstances of the case for the purposes outlined in E-214 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in E-408(i) and E-408(ii).

E-412 Action by Contracting Officer—Approval. After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

(i) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available;

(ii) The request and information furnished by the contractor;

(iii) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(iv) Comment on (A) the need for the advance payments for performance of the contract, and (B) the benefits to the Government from the contemplated contract performance;

(v) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;

(vi) The appropriate findings, determination and authorization (E-410) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;

(vii) Recommendation that the advance payment be approved; and

(viii) Justification of proposal, if any, for waiver of interest charge (E-403).

E-412.1 *Action by Contracting Officer—Disapproval.* If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the appropriate contract financing office (E-212). This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of these regulations.

E-413 Security—Supervision—Covenants.

(a) The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts, unless the alternate method of advance payments under E-413.1 below is to be used, and should include suitable covenants to protect the Government's interest. Advance payments under such authorization should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

(b) Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or standby of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

E-413.1 *Alternate Procedure for Advance Payments Without a Special Bank Account.* In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, advance payments in reasonable amounts will be made, when prudent and practical, on experimental, research and development contracts with such institutions by interest-free advance payment arrangements, without the use of either special bank accounts or letters of credit. The advance payments will be periodically made directly to the institutions under the procedure described below:

(a) The contract clause set forth in 7-104.34 for advance payments will be used; however, in lieu of the requirements relative to a special bank account, there will be provisions for advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for performance of pool contracts and submit a statement (request) for an advance payment, in an acceptable format with supporting information as prescribed by the administering office, to the Administrative Contracting Officer or other designated approving official who will determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the contractor's need for such period, the request will be approved and forwarded to the disbursing office for payment of only that amount determined by the approving official to be needed by the contractor. The approving official will act promptly, in accordance with contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request for an advance payment.

(b) The contractor shall submit cost reimbursement vouchers under its contracts being financed by advance payments to the therein designated disbursing office on at least a monthly basis. The proceeds from the payments that would otherwise be due the contractor under such vouchers will be applied in liquidation of the outstanding advance payments. If the payments due exceed the outstanding advance payments, the proceeds will first be applied to fully liquidate the outstanding advance payments and the remaining balance due will be paid to the contractor. The amount otherwise due the contractor under such cost reimbursement vouchers should never exceed the outstanding advance payments under normal operations, except upon implementation and/or termination of an advance payment arrangement. This is because all of the financing under the applicable contracts is provided under the advance payment arrangement and there is always a time lag in submission of vouchers for materials and/or services previously provided by the contractor.

(c) The advance payments will be requested, approved, and paid based on estimates. There will be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over or under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

E-414 Forms of Contract Provisions and Supplemental Agreements. The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify E-414.1(b) and the second sentence of paragraph (7) of the clause in 7-104.34.

E-414.1 *Form of Agreement for Special Bank Account*. For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT (DEC. 1980)

AGREEMENT entered into this .... day of ...., 19......., between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, ..., a corporation under the laws of the State of ...., hereinafter called the Contractor, and ...., a banking corporation under the laws of ...., located at ...., hereinafter called the Bank.

RECITALS

(a) Under date of ...., 19......., the Government and the Contractor entered into Contract(s) No. ...., or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "..............................(*Name of Contractor*), ... (*Department*), Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that—

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the .... stationery and purporting to be signed by, or by the direction of .... or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the ....

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify .... (*Administering Office*).

(5) The Bank will advise the Government of its published prime interest rate and the changes therein during the month on the last business day of each month so long as this Special Bank Account remains in existence. (This covenant will not be included in Special Bank Account Agreements covering interest-free advance payments.)

IN WITNESS WHEREOF the parties thereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

E-414.2 *Advance Payment Provisions.* Approved contract provisions for advance payments, with directions for use where appropriate, are in 7-104.34.

E-415 Pooled Advance Payments—General. Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of cost type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in E-103.

E-415.1 *Distinction Between Pool Contracts and Designated Pool Contracts.* An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

E-416 Advance Payments Pool Agreements—Special Features. The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are—

(i) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides for substitution from time to time of new or different contracts as the "designated pool contract(s);"

(ii) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;

(iii) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s);"

(iv) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts;"

(v) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account, except in those cases where the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1 and, in such cases, payments otherwise due the contractor under pool contracts are applied in liquidation of the outstanding advance payments; and

(vi) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

E-417 Liquidation—Designated Pool Contracts—Administering Office. It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

E-418 Pooled Advance Payments—Understandings. Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. The following guidance is provided.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Department, the authorizing Department ordinarily would be the one having preponderant interest in the contractor's backlog of unfinished contracts, along the lines of E-306. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term contract of a nonpreponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

BEST DOCUMENT AVAILABLE

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

E-419 Excluded Advance Payments. These regulations do not apply to advance payments for:

- (i) extension or connection of public utilities for military installations, as authorized by Military Construction Authorization Acts;
- (ii) authorized insurance premiums, including insurance of official motor vehicles in foreign countries, and expenses of investigations in foreign countries, as authorized by Section 603 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by other legislation authorizing payments for such expenses;
- (iii) rentals, as authorized by Section 606 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by 31 U.S.C. 529i (69 Stat. 314) or by other legislation specifically authorizing advance payment of rent;
- (iv) tuition, as authorized by 31 U.S.C. 529i (69 Stat. 314);
- (v) subscriptions to publications, as authorized by 31 U.S.C. 530;
- (vi) small purchases of goods or services in foreign countries, when the purchase price does not exceed $10,000 or equivalent amount of applicable foreign currency and advance payment of the purchase price or of a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned, as authorized by 31 U.S.C. 529i (69 Stat. 314); or
- (vii) advertising for military recruitment in high school and college publications not to exceed $500.00 under any single contract.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 5—Progress Payments Based on Costs

E-500 Scope. This Part provides uniform policies, procedures, and forms for progress payments based on costs.

E-500.1 *References.* Paragraphs E-000, E-001, E-002, E-003, E-100, E-105, E-106, E-107, and all of Part 2 apply to all progress payments, whether based on costs or on a percentage or stage of completion.

E-500.2 *Exclusions.* This Part does not apply to (i) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (E-514), or (ii) contracts for construction (as defined in 10-101.6), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

E-500.3 *Contract Coverage.* Except as provided in E-500.2 above, this Part applies to all contracts (1-201.5) providing for progress payments. This Part applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith. However, a provision for unusual progress payments not specifically provided for in a contract at the time such contract was initially entered into and which may result in unliquidated unusual progress payments exceeding $25,000,000 shall not be inserted in a contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. In addition, no agreement for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into, shall be entered into without the prior written coordination of the ODDR&E if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for such payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

E-501 Percentage or Stage of Completion. Progress payments based on a percentage or stage of completion will be confined to contracts for construction (10-101.6), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable.

E-502 Obligations. Nothing in these regulations shall be construed to authorize payment of more than the amount obligated on a contract.

E-502.1 *Requests for Proposals.* Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts. Requests for proposals shall not state a liquidation rate for progress payments. See E-512.

E-503 Customary Progress Payments. Certain contracts may require contractor's predelivery or unbillable partial performance expenditures that will have a material impact on the contractor's working funds. These include production contracts which involve a long "lead time" or preparatory period between the beginning of work and the first production delivery, normally involving four months or more for small business concerns and six months or more for firms which are not small business concerns. They also include some contracts for research and development and some contracts for services which have a long time period, of approximately four months or more for small business concerns and six months or more for firms which are not small business concerns, between the beginning of work and the first opportunity to bill and receive payment for a significant element of contract performance. Progress payments are customary at (i) the uniform standard percentages of total costs (E-503.1, E-503.2) or flexible progress payment rates determined in accordance with E-530; (ii) the uniform cost base (E-509.5); (iii) the frequency of payment established in the progress payment clause (7-104.35); and (iv) the ordinary liquidation method (E-512.1) unless changed to the alternate method as provided in E-512.2 on this category of contracts and letter contracts contemplating a definitive fixed price type of contract. Length of lead time, or length of the time period within which billings for deliveries or for significant partial performance cannot be accomplished, are not a factor in qualifying letter contracts and their superseding definitive contracts for customary progress payments. Contract financing arrangements other than those set forth in this paragraph are regarded as unusual, and not within the category of customary progress payments (E-505).

The long lead time or preparatory period in these cases, and the accompanying predelivery or pre-partial performance billing expenditures that may have a material impact on the contractor's working funds, and the equivalent circumstances of letter contracts and their superseding definitive contracts, are regarded as making these customary progress payments reasonably necessary. The general preference for private financing is not applicable to this class of cases. Provision for customary progress payments will be made as a matter of course when requested by contractors who are known (from experience or adequate preaward investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors who are not small business concerns, *e.g.*, contracts for less than $1,000,000, unless the circumstances of a group of such contracts, for contemporaneous performance, make such contracts the approximate equivalent of a larger contract that would have a material impact on the contractor's working funds. If a small business concern, and the contract involved, meet the above standards for customary progress payments, the smallness of the contract shall not deter the making of provision for customary progress payments to such small business concerns.

E-503.1 *Uniform Standard Percentages*. The uniform standard progress payment rate is 90% of total costs for firms which are not small business concerns, and 95% for small business concerns, whether or not awarded by formal advertising. If flexible progress payment rates are not used, higher percentages will be regarded as unusual (E-505) and not within the category of customary progress payments. No percentage higher than the uniform standard progress payment may be offered in any solicitation unless approved in advance in accordance with E-505, or unless developed in accordance with flexible progress payment procedures (E-530).

E-503.2 *Uniform Standard Percentages — Foreign Military Sales (FMS) Contracts*.

(a) Progress payments made on FMS contracts are subject to the same policies as normal DoD contracts.

(b) On FMS requirements, the Arms Export Control Act requires the deposit of FMS customer cash in advance of related payments to contractors. In order to comply with this requirement, all FMS contracts with progress payments must contain the billing procedures described below. For these purposes, the contractor shall allocate costs between customer countries in a manner acceptable to the Administrative Contracting Officer that does not incur undue administrative expense. If more than one customer country is covered by a contract, the contractor shall submit one DD Form 1195 with a supporting schedule showing the portions of the total requested payment to be attributed to each country's requirement.

(c) When submitting requests, the contractor shall annotate the DD Form 1195 as follows:

(i) the line item numbers to which the request applies;
(ii) Item 5 shall refer to the total price of the items to which the request applies;
(iii) references to "total costs" shall be interpreted to mean the total costs associated with the items to which the request applies; and
(iv) in Item 14a, contractors shall include only those subcontractor costs which are applicable to the items for which the contractor is requiring payment.

E-503.3 *Indefinite Quantity Contracts—Basic Ordering Agreements.*

(a) For indefinite quantity contracts (3-409.3) and basic ordering agreements (3-410.2) contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract or basic ordering agreement may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payments. Insofar as practicable, the progress payment provision of an indefinite quantity contract or basic ordering agreement shall fix a single liquidation rate to be applicable to all procurement actions under that agreement. The standards for unusual progress payments govern when progress payments are not of the customary type.

(b) Progress payments made under indefinite quantity contracts and basic ordering agreements shall normally be processed on the basis of individual orders or calls. Alternatively, at the contractor's request, but with the specific approval of the ACO, provision may be made to process progress payments against the basic contract/agreement. Whenever the contract/agreement method is used, the contractor shall be required to submit a supporting schedule for each DD Form 1195, identifying the costs applicable to each call or order. Subject to the above restrictions, for progress payment purposes, all procurement actions under the basic contract, (1) involving progress payments on a procurement action, and (2) having a single uniform liquidation rate, and (3) for payment by a single paying office (1-201.30), may be grouped and aggregated so that the contract price, costs, payments and liquidations will be handled in the same way as if all such procurement actions constituted work under a single fixed-price type contract.

Except as provided above, for progress payment purposes, each order, call or equivalent procurement action, with progress payments, will be treated as a separate contract.

E-504 Formal Advertising and Small Business Restricted Advertising. Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated below.

E-504.1 *Progress Payment Provision in Invitations for Bids.* When progress payments are contemplated, the invitation for bids shall include a notice of availability of progress payments as required by E-504.4. The The percentage of total costs to be mentioned in these invitations for bids is 85% for small business concerns and 80% for firms which are not small business concerns.

Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed four months for small business concerns and six months for firms which are not small business concerns, or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of predelivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components).

Provision for progress payments shall also be made in invitations for bids whenever it is estimated that the procurement will involve approximately $100,000 or more and that bids are likely to be submitted by one or more small business concerns, unless the procurement is within one or more of the excepted categories set out below. Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is for quick turn-over items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as (i) subsistence, (ii) clothing and apparel, (iii) "off-the-shelf" items, and (iv) standard commercial items or equivalent items (including medical and dental supplies), not requiring substantial accumulation of predelivery expenditures.

Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (i) facilitate necessary contract financing assistance to small suppliers and (ii) avoid the necessity for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

E-504.2 *Small Business Restricted Advertising.* The above policy and standards also apply to procurement by "Small Business Restricted Advertising" and for procurement pursuant to E-504.3. When progress payments are contemplated in these cases, provision will be made for progress payment percentage at 85 percent of total costs.

E-504.3 *Progress Payments Exclusively for Small Business.* A stated purpose of Public Law 85-800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended 10 U.S.C. 2307 by providing that contracting agencies "may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by E-504.1 and E-504.4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small business concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (E-504.1) and the notice to bidders (E-504.4) will be supplemented by the provision in 7-2003.63.

E-504.4 *Notice to Bidders.* Those invitations for bids that make provision for progress payments (E-504.1) shall contain the notice to bidders in 7-2003.64.

E-504.5 *Nonresponsive Bids—Uninvited Progress Payment Condition.* To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, progress payment clauses cannot be included in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (E-504.3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

E-505 Unusual Progress Payment—Standards—Procedure. Progress payments based on costs, other than progress payments of the class and within the limits set forth in E-503 and E-504, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the Departments. Any contractor seeking provision for progress payments that is "unusual," within the meaning of these regulations, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the Head of a Procuring Activity (1-201.7) or of a general or flag officer designated for that purpose.

Such cases must involve a preparatory period requiring contractor's predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates for progress payments in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

All requests involving progress payments at other than customary arrangements (E-503), if regarded favorably by the Head of a Procuring Activity (1-201.7) or by a specially designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at Departmental Headquarters of the Department directly concerned. Such office or person may be the contract financing office at Departmental headquarters or such person or persons, located at Departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other Departments and of the Office of the Director of Defense Research and Engineering. However, a provision for unusual progress payments not specifically provided for in a contract at the time such contract was initially entered into and which may result in unliquidated unusual progress payments exceeding $25,000,000 shall not be inserted in a contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. Further, no agreement for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into, shall be entered into without the prior written coordination of the ODDR&E if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for such payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

Progress payments of a class and within the limits set forth in paragraph E-503 on letter contracts and on definitive contracts superseding letter contracts are not deemed unusual.

E-506 Accounting System and Controls. The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by the Defense Contract Audit Agency) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom the Defense Contract Audit Agency has had no experience within the next preceding twelve months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes shall be accomplished. Until such time as the necessary changes are made, the accounting system shall be deemed inadequate and progress payments suspended. For this purpose, the services of the Defense Contract Audit Agency should be utilized to the greatest extent practicable.

E-507 Information Required. The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Parts 2 and 5 of these regulations. For guidance as to necessity for financial information and analysis, and the scope, depth and detail of analysis, see particularly E-213 and E-214.

E-508 Advance Payments. When advance payments and progress payments are authorized in the same contract, progress payment percentages will not exceed the uniform standard percentages mentioned in E-503 and E-504. In these cases, the words "less unliquidated advance payments" may be deleted from paragraph (a)(3)(ii) of the progress payment clauses (7-104.35) in the discretion of the contract financing office (E-212).

E-509 Definitions. As used herein, the following terms have the meanings set forth below.

E-509.1 *Progress Payments.* See E-106. The term "*progress payments*" must be distinguished from "*partial payments.*" The term "*partial payments*" describes only (1) payments for partial deliveries accepted by the Government under a contract, or (2) specified payments for significant "milestones" of accomplished performance, and (3) partial payments on contract termination claims.

E-509.2 *Customary Progress Payments.* See E-503 and E-504.

E-509.3 *Unusual Progress Payments.* See E-505.

E-509.4 *Costs.* For progress payment purposes, costs, except as otherwise limited in this paragraph, include all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and not excluded by the contract. Limitations on costs that may be accepted for progress payments are contained in the clauses in 7-104.35.

E-509.5 *Incurred Costs.*

(a) Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for (i) completed work to which the prime contractor has acquired title, (ii) materials delivered (to which the prime contractor has acquired title), (iii) services rendered, (iv) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title, and (v) invoices for progress payments to subcontractors, which have been paid or approved for current payment in the ordinary course of business (as specified in the prime contract), all properly recorded on the books of the contractor and identified with the contracts. Costs incurred are exclusively costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocable and allowable overhead (indirect) costs recorded on the books of the contractor.

(b) However, for those contractors who elected to use the special transition method provided in Cost Accounting Standard (CAS) 410, "Allocation of Business Unit General and Ad Administrative Expenses to Final Cost Objectives," General and Administrative Expenses (G&A) shall not be included in incurred costs eligible for progress payments until the work-in-process inventories of those contracts entered into after the applicability date of CAS 410, exceed the amounts contained in the CAS 410 suspense account and then limited to the contractor's pro rata share of the G&A allocable to such excess. This limitation shall not apply where the CAS 410 suspense account is less than $5 million.

(c) Facilities capital cost of money, which is recognized as an allowable cost by 15-205.50, shall be deemed an incurred cost for progress payment purposes. When this cost is allocated in compliance with 3-1300 and records are maintained in accordance with 15-205.50, it shall be a "properly allocable and allowable indirect cost as shown by records maintained by the contractor" within the meaning of that requirement as included in the Computation of Amounts provision of the appropriate Progress Payment clause set forth in 7-104.35.

(d) For the purpose of progress payments to other than small business concerns in connection with items or services purchased directly for the contract, costs must be paid as well as incurred as shown by payment made by cash, check, interdivisional notices of payment or other form of actual payment.

E-509.6 *Unliquidated Progress Payments.* Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sums of amounts applied to reduce progress payments.

E-509.7 *Contract Price.* The term "*contract price*" means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If the contract provides for economic price adjustment or for redetermination of price, this term means the initial price until changed and not the ceiling price. If the contract is of the incentive type, the term means the target or billing price, as amended, until final pricing. This definition shall also apply to incentive type subcontracts containing a progress payment clause. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

E-509.8 *Amendments, Supplements, and Modifications.* The terms "*amendment,*" "*supplement,*" and "*modification*" are used interchangeably, and whenever one of these terms is used it includes the others. The term "*new contract,*" as used herein, does not include "*amendments.*" See E-503.2.

E-509.9 *Deviation.* The term "*deviation*" means (i) any change, addition to, or deletion from the contract clause and certificate form required by this Part 5; (ii) any contract provision, outside the Progress Payment clause, which would have the effect of altering or changing the effect of the Progress Payment clause provided in 7-104.35; and (iii) any variation from these regulations. Actions pursuant to E-511.5 are not deviations.

E-509.10 *Milestone Billing Arrangements.* Milestone billing arrangements are contractual provisions which provide for payments to a contractor upon the successful completion of specific performance events which do not involve physical deliveries to the Government. While the milestone payments are not considered progress payments, in that payments are based on the completion of such milestones and are payments in addition to progress payments, the milestone payments are interim payments with respect to total contract performance which payments are fully recoverable, in the same manner as progress payments, in the event of default. Also see E-529.

E-510 Contract Clause. Subject to the instructions in E-511 and E-512, the Progress Payment clauses in 7-104.35 shall be used when payments are to be made to a contractor based upon a percentage of costs. The clause contained in 7-104.35(a) shall be used in contracts with other than small business concerns. The clause contained in 7-104.35(b) shall be used in contracts with small business concerns.

E-510.1 *Progress Payment Clause for Other Than Small Business Concerns.* See 7-104.35(a).

E-510.2 *Progress Payment Clause for Small Business Concerns.* See 7-104.35(b).

E-511 Instructions for Progress Payment Clause. The instructions below apply to the clauses in 7-104.35.

E-511.1 *Contracting Officer.* The term "*contracting officer*" as used in this Part 5 means the contracting officer as defined in 1-201.3.

E-511.2 *Uniform Standard Percentages — Firms Not Small Business Concerns—Paragraphs (a) and (b) of Clause.* For contracts with contractors that are not small business concerns, except as provided in E-511.4, the figure of 90 percent stated in paragraphs (a)(1)(i), (a)(4)(i), (a)(4)(ii), (a)(5) and (b) of the clause in 7-104.35(a) is the uniform standard percentage for use in those paragraphs for all contracts, whether awarded on the basis of formal advertising or negotiation.

E-511.3 *Uniform Standard Percentages — Small Business Concerns—Paragraphs (a) and (b) of Clause.* For contracts with small business concerns, except as provided in E-511.4, a figure of 95 percent shall be specified in paragraphs (a)(1)(i), (a)(3)(i), (a)(3)(ii), (a)(4) and (b) of the clause in 7-104.35(b). This is the standard percentage for all contracts awarded to small businesses, whether on the basis of formal advertising (E-504.1, E-504.2, or E-504.3) or negotiation.

E-511.4 *Unusual Percentages.* For unusual progress payments (E-505), the percentage used for paragraph (a)(1)(i) of the clauses in 7-104.35 will also be specified in (a)(3)(i). For these contracts, if a percentage lower than the percentage used for (a)(1)(i) is stated in paragraph (b) of the clause pursuant to E-512.2, the exact percentage stated in (b) shall also be specified in paragraph (a)(3)(ii) and (a)(4) of the clause.

E-511.5 *Other Protective Provisions.* When deemed reasonably necessary for the protection of the Government, the clauses in 7-104.35 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or standbys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in paragraph (18) of the clause in 7-104.34. When first article approval is required (Section I, Part 19), additional protective provisions shall be used reciting that, until first article approval (1-1901), there shall be no progress payments, or that the aggregate of progress payments for first article costs shall be limited to a stated amount, or percentage (less than the percentage used in paragraph (a)(4) of the clause in 7-104.35(a) and paragraph (a)(3) of the clause in 7-104.35(b)) of the contract price.

E-511.6 *Provisional Increases in Contract Price.* Ordinarily, the definitized price shall be the basis for limiting the aggregate amount of progress payments within the meaning of "total contract price" as used in paragraph (a)(5) of the clause in 7-104.35(a) and paragraph (a)(4) of the clause in 7-104.35(b). An exception exists if the application of this limitation would result in an inability to pay progress payments for costs properly incurred for authorized but unpriced contractual actions pertaining to the definitized contract or in the case of incentive-type contracts, if the contractor's costs exceed the target price. When this exception exists, the contracting officer may make a provisional increase in the contract price for the purpose of paragraph (a)(5) of the clause in 7-104.35(a) and paragraph (a)(4) of the clause in 7-104.35(b). The provisional increase to the contract price shall not exceed the amount recorded as an obligation based upon the Government's estimate of its liability for those unpriced contractual actions.

E-512 Progress Payment Liquidation. Controlling principles for liquidation of progress payments based on costs, and for specification of a percentage in paragraph (b) of the clauses (7-104.35(a) & (b)) are set out below.

E-512.1 *Ordinary Method.* See E-511.2 and E-511.3. The percentages specified in E-511.2 and E-511.3 for paragraph (b) of the Progress Payment clauses (7-104.35) represent the ordinary method for liquidation of progress payments, i.e., the percentage for progress payments stated in (a)(1)(i) of each clause will also be the percentage for liquidation stated in (b) of such clause. However, when a contract is subject to a limitation on General and Administrative (G&A) expenses eligible for progress payments because a contractor elected to use the special transition method provided in Cost Accounting Standard 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objectives, an adjusted ordinary liquidation rate will be used. The adjusted liquidation rate will be established by subtracting from the progress payment percentage stated in the contract, the percentage computed by multiplying the progress payment percentage by the results of dividing the unbilled G&A expense by the contract price. For example, if the price was $1,100,000 and the unbilled G&A was $47,600 the liquidation rate would be:

Progress Payment Percentage	80.00%
Less:	
Unbilled G&A ÷ Contract Price x Progress Payment Percentage ($47,600 ÷ $1,100,000) x 80%	3.46%
	76.54%

These methods of liquidation are the only methods authorized for use at the inception of a contract.

E-512.2 *Alternate Method of Liquidation.*

(a) The alternate method for liquidation of progress payments involves the use of a percentage rate of liquidation which will (i) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i.e., recovery of the portion of costs for which progress payments have been made), (ii) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (iii) insure that unliquidated progress payments will not exceed the amount permitted by paragraph (a)(3) of the Progress Payment clause of the contract.

(b) Adequate consideration shall be deemed to exist in the initial negotiation of the contract for subsequent changes in the percentage of liquidation. A negotiated contract shall be amended to substitute the alternate rate of liquidation for the ordinary rate when all of the following conditions are met:

(1) Contract delivery schedule extends 18 months or more beyond the contract award date.

(2) Not less than one year of actual cost data have been accumulated where no deliveries have been made or actual cost data on deliveries made whichever is earlier.

(3) The contractor requests the alternate rate and furnishes data on actual cumulative costs and estimated future costs to complete the contract, which satisfactorily fulfill the requirements in E-512.2(a).

(4) The parties agree on an appropriate percentage rate of liquidation.

(5) The contractor agrees to provide updated information on an annual basis or upon request of the PCO/ACO and certify as to the continued validity of the alternate rate in relation to the E-512.2(a) requirements.

When the above-stated conditions are met, the contracting officer shall take prompt action to amend the contract to provide for the alternate liquidation rate.

(c) If profit rates on contracts subject to price redetermination or to incentive price revision are changed by contract modification (7-108.2, 7-109.2) appropriate harmonizing changes to conform to E-512.2(a) will be made at the time of such modification in the stated percentage for future progress payment liquidation. Except as done incident to modification of a profit rate on contracts subject to price redetermination or to incentive price revision, above, contracts may be amended to reduce the progress payment liquidation rate not more frequently than once in each period of twelve months. Amendments reducing liquidation rates will be retroactive as well as prospective and appropriate adjustment will be made for items theretofore delivered and associated progress payments. When a progress payment liquidation rate is changed by contract amendment, appropriate conforming changes will be made in (a)(4)(ii) and (a)(5) of the clause in 7-104.35(a) and (a)(3)(ii) and (a)(4) of the clause in 7-104.35(b) so that the new percentage specified in paragraph (b) of the progress payment clause will also be specified in these paragraphs.

(d) Contract amendments which substitute an alternate rate of liquidation for the ordinary rate shall include the following provision:

> On an annual basis, or more frequently as determined necessary by the ACO or PCO, the Contractor agrees to (1) certify in relation to the requirements of ASPR E-512.2(a) as to the continued validity of the liquidation rate in the progress payment clause as hereby amended and (2) furnish information which adequately supports the certification.

(e) Revision of an alternate liquidation rate (E-512.3) would occur because either (i) a contractor is realizing more profit than previously anticipated and the liquidation rate is to be adjusted downward, or (ii) a contractor is achieving less profit than anticipated and the liquidation rate is to be adjusted upward. A contractor should be promptly paid any amount improperly withheld, and conversely, any overpayments should be promptly recouped. Therefore, revised liquidation rates should apply retroactively and prospectively. This policy will be administered in accordance with the provisions of E-524.

E-512.3 *Liquidation Percentages.*

(a) For the purposes of E-512.2, the minimum liquidation rate has to be enough to recover the full amount of progress payments by way of deductions from delivery billings. The amount of expected progress payments, divided by the contract price, gives the minimum liquidation percentage. The amount of expected progress payments is the product of multiplication of the progress payment percentage by either (i) the total estimated contract costs or (ii) the total estimated contract cost less estimated G&A costs not eligible for progress payments because a contractor elected to use the special transition method provided in Cost Accounting Standard 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objectives. For the purpose of this paragraph, the contract price may be calculated by the ACO, utilizing the services of DCAA, to include authorized but undefinitized work and projected economic adjustments; however, the price thus calculated may not exceed the Government's estimate of the price of all authorized work. ACO contract files shall document the basis and rationale for calculation of such rates. Examples of computations of the alternate liquidation rates when progress payments are made at 80% are as follows:

(i) If price is $1,100,000 and total estimated cost of $1,000,000 is eligible for progress payments, the liquidation rate would be:

$$\frac{1,000,000 \times 80\%}{1,100,000} - 72.72\%$$

(ii) If price is $1,100,000 and total estimated cost includes $47,600 of G&A not eligible for progress payments, the liquidation rate would be:

$$\frac{(1,000,000 - 47,600) \times 80\%}{1,100,000} - 69.26\%$$

(b) For the computation of minimum rates of liquidation, fractions of a percent point will be expressed in tenths. Fractions between tenths will be rounded upward to the next higher tenth of a point. On the examples noted in E-512.3(a), above:

(i) 63.64% would be expressed as 63.7% in the contract
(ii) 68.18% would be expressed as 68.2% in the contract
(iii) 72.72% would be expressed as 72.8% in the contract
(iv) 77.27% would be expressed as 77.3% in the contract
(v) 81.81% would be expressed as 81.9% in the contract

(c) Further illustrative examples of minimum liquidation rates for contracts not subject to the CAS 410 suspense account limitation on G&A expense are set out below. For the purposes of E-512.2 the profit rate is deemed to be the amount by which the fixed or target contract price exceeds estimated total costs within the fixed or target price, divided by those estimated total costs,

$$\textit{e.g.,} \quad \frac{\text{Price—Costs}}{\text{Costs}} - \text{Profit Rate.}$$

If the estimated profit rate falls between tenths of a percent point, the fraction of a tenth will be dropped off for computation of a minimum liquidation rate. For example, a profit rate of 8.21% or 8.29% would be used as 8.2% for this computation of a minimum liquidation rate.

DEFENSE CONTRACT FINANCING REGULATIONS

ILLUSTRATIVE MINIMUM PROGRESS PAYMENT LIQUIDATION RATES

Profit	*Minimum Liquidation Rate, with Progress Payment Rate:*												
Rate	80%	85%	90%	91%	92%	93%	94%	95%	96%	97%	98%	99%	100%
2.0	78.5	83.4	88.3	89.3	90.2	91.2	92.2	93.2	94.2	95.1	96.1	97.1	98.1
3.0	77.7	82.6	87.4	88.4	89.4	90.3	91.3	92.3	93.2	94.2	95.2	96.2	97.1
4.0	77.0	81.8	86.6	87.5	88.5	89.5	90.4	91.4	92.3	93.3	94.3	95.2	96.2
4.1	76.9	81.7	86.5	87.5	88.4	89.4	90.3	91.3	92.3	93.2	94.2	95.1	96.1
5.0	76.2	81.0	85.8	86.7	87.7	88.6	89.6	90.5	91.5	92.4	93.4	94.3	95.3
6.0	75.5	80.2	84.9	85.9	86.8	87.8	88.7	89.7	90.6	91.5	92.5	93.4	94.4
7.0	74.8	79.5	84.2	85.1	86.0	87.0	87.9	88.8	89.8	90.7	91.6	92.6	93.5
7.1	74.7	79.4	84.1	85.0	85.9	86.9	87.8	88.7	89.7	90.6	91.3	92.5	93.4
7.2	74.7	79.3	84.0	84.9	85.9	86.8	87.7	88.7	89.6	90.5	91.5	92.4	93.3
7.3	74.6	79.3	83.9	84.8	85.8	86.7	87.6	88.6	89.5	90.4	91.4	92.3	93.2
7.4	74.5	79.2	83.8	84.8	85.7	86.6	87.6	88.5	89.4	90.4	91.3	92.2	93.1
7.5	74.5	79.1	83.8	84.7	85.6	86.6	87.5	88.4	89.3	90.3	91.2	92.1	93.1
7.6	74.4	79.0	83.7	84.6	85.5	86.5	87.4	88.3	89.3	90.2	91.1	92.0	93.0
7.7	74.3	79.0	83.6	84.5	85.5	86.4	87.3	88.2	89.2	90.1	91.0	92.0	92.9
7.8	74.3	78.9	83.5	84.5	85.4	86.3	87.2	88.2	89.1	90.0	90.9	91.9	92.8
7.9	74.2	78.8	83.5	84.4	85.3	86.2	87.2	88.1	89.0	89.9	90.9	91.8	92.7
8.0	74.1	78.7	83.4	84.3	85.2	86.2	87.1	88.0	88.9	89.9	90.8	91.7	92.6
8.1	74.0	78.7	83.3	84.2	85.1	86.1	87.0	87.9	88.8	89.8	90.7	91.6	92.5
8.2	74.0	78.6	83.2	84.1	85.1	86.0	86.9	87.8	88.8	89.7	90.6	91.5	92.5
8.3	73.9	78.5	83.1	84.1	85.0	85.9	86.8	87.8	88.7	89.6	90.5	91.5	92.4
8.4	73.8	78.5	83.1	84.0	84.9	85.8	86.8	87.7	88.6	89.5	90.4	91.4	92.3
8.5	73.8	78.4	83.0	83.9	84.8	85.8	86.7	87.6	88.5	89.4	90.4	91.3	92.2
8.6	73.7	78.3	82.9	83.8	84.8	85.7	86.6	87.5	88.4	89.4	90.3	91.2	92.1
8.7	73.6	78.2	82.8	83.8	84.7	85.6	86.5	87.4	88.4	89.3	90.2	91.1	92.0
8.8	73.6	78.2	82.8	83.7	84.6	85.5	86.4	87.4	88.3	89.2	90.1	91.0	92.0
8.9	73.5	78.1	82.7	83.6	84.5	85.4	86.4	87.3	88.2	89.1	90.0	90.9	91.9
9.0	73.4	78.0	82.6	83.5	84.4	85.4	86.3	87.2	88.1	89.0	89.9	90.9	91.8
9.1	73.4	78.0	82.5	83.4	84.4	85.3	86.2	87.1	88.0	88.9	89.9	90.8	91.7
9.2	73.3	77.9	82.5	83.4	84.3	85.2	86.1	87.0	88.0	88.9	89.8	90.7	91.6
9.3	73.2	77.8	82.4	83.3	84.2	85.1	86.0	87.0	87.9	88.8	89.7	90.6	91.5
9.4	73.2	77.7	82.3	83.2	84.1	85.0	86.0	86.9	87.8	88.7	89.6	90.5	91.4
9.5	73.1	77.7	82.2	83.1	84.1	85.0	85.9	86.8	87.7	88.6	89.5	90.5	91.4
9.6	73.0	77.6	82.2	83.1	84.0	84.9	85.8	86.7	87.6	88.5	89.5	90.4	91.3
9.7	73.0	77.5	82.1	83.0	83.9	84.8	85.7	86.6	87.6	88.5	89.4	90.3	91.2
9.8	72.9	77.5	82.0	82.9	83.8	84.7	85.7	86.6	87.5	88.4	89.3	90.2	91.1
9.9	72.8	77.4	81.9	82.8	83.8	84.7	85.6	86.5	87.4	88.3	89.2	90.1	91.0
10.0	72.8	77.3	81.9	82.8	83.7	84.6	85.5	86.4	87.3	88.2	89.1	90.0	90.9
10.1	72.7	77.2	81.8	82.7	83.6	84.5	85.4	86.3	87.2	88.1	89.0	90.0	90.9
10.2	72.6	77.2	81.7	82.6	83.5	84.4	85.3	86.2	87.2	88.1	89.0	89.9	90.8
10.3	72.6	77.1	81.6	82.5	83.4	84.4	85.3	86.2	87.1	88.0	88.9	89.8	90.7
10.4	72.5	77.0	81.6	82.5	83.4	84.3	85.2	86.1	87.0	87.9	88.8	89.7	90.6
10.5	72.4	77.0	81.5	82.4	83.3	84.2	85.1	86.0	86.9	87.8	88.7	89.6	90.5
10.6	72.4	76.9	81.4	82.3	83.2	84.1	85.0	85.9	86.8	87.7	88.6	89.6	90.5
10.7	72.3	76.8	81.3	82.2	83.1	84.1	85.0	85.9	86.8	87.7	88.6	89.5	90.4

ILLUSTRATIVE MINIMUM PROGRESS PAYMENT LIQUIDATION RATES—*Continued*

Profit	*Minimum Liquidation Rate, with Progress Payment Rate:*												
Rate	80%	85%	90%	91%	92%	93%	94%	95%	96%	97%	98%	99%	100%
10.8	72.2	76.8	81.3	82.2	83.1	84.0	84.9	85.8	86.7	87.6	88.5	89.4	90.3
10.9	72.2	76.7	81.2	82.1	83.0	83.9	84.8	85.7	86.6	87.5	88.4	89.3	90.2
11.0	72.1	76.6	81.1	82.0	82.9	83.8	84.7	85.6	86.5	87.4	88.3	89.2	90.1
11.1	72.0	76.5	81.0	81.9	82.8	83.7	84.6	85.5	86.4	87.3	88.2	89.1	90.0
11.2	72.0	76.5	81.0	81.9	82.8	83.7	84.6	85.5	86.4	87.3	88.2	89.1	90.0
11.3	71.9	76.4	80.9	81.8	82.7	83.6	84.5	85.4	86.3	87.2	88.1	89.0	89.9
11.4	71.9	76.3	80.8	81.7	82.6	83.5	84.4	85.3	86.2	87.1	88.0	88.9	89.8
11.5	71.8	76.3	80.8	81.7	82.6	83.4	84.3	85.2	86.1	87.0	87.9	88.8	89.7
11.6	71.7	76.2	80.7	81.6	82.5	83.4	84.3	85.2	86.1	87.0	87.9	88.7	89.6
11.7	71.7	76.1	80.6	81.5	82.4	83.3	84.2	85.1	86.0	86.9	87.8	88.7	89.6
11.8	71.6	76.1	80.5	81.4	82.3	83.2	84.1	85.0	85.9	86.8	87.7	88.6	89.5
11.9	71.5	76.0	80.5	81.4	82.3	83.1	84.0	84.9	85.8	86.7	87.6	88.5	89.4
12.0	71.5	75.9	80.4	81.3	82.2	83.1	84.0	84.9	85.8	86.6	87.5	88.4	89.3
12.1	71.4	75.9	80.3	81.2	82.1	83.0	83.9	84.8	85.7	86.6	87.5	88.4	89.2
12.2	71.3	75.8	80.3	81.1	82.0	82.9	83.8	84.7	85.6	86.5	87.4	88.3	89.2
12.3	71.3	75.7	80.2	81.1	82.0	82.9	83.7	84.6	85.5	86.4	87.3	88.2	89.1
12.4	71.2	75.7	80.1	81.0	81.9	82.8	83.7	84.6	85.4	86.3	87.2	88.1	89.0
12.5	71.2	75.6	80.0	80.9	81.8	82.7	83.6	84.5	85.4	86.3	87.2	88.0	88.9
12.6	71.1	75.5	80.0	80.9	81.7	82.6	83.5	84.4	85.3	86.2	87.1	88.0	88.8
12.7	71.0	75.5	79.9	80.8	81.7	82.6	83.4	84.3	85.2	86.1	87.0	87.9	88.8
12.8	71.0	75.4	79.8	80.7	81.6	82.5	83.4	84.3	85.1	86.0	86.9	87.8	88.7
12.9	70.9	75.3	79.8	80.6	81.5	82.4	83.3	84.2	85.1	86.0	86.8	87.7	88.6
13.0	70.8	75.3	79.7	80.6	81.5	82.3	83.2	84.1	85.0	85.9	86.8	87.7	88.5
13.1	70.8	75.2	79.6	80.5	81.4	82.3	83.2	84.0	84.9	85.8	86.7	87.6	88.5
13.2	70.7	75.1	79.5	80.4	81.3	82.2	83.1	84.0	84.8	85.7	86.6	87.5	88.4
13.3	70.6	75.1	79.5	80.4	81.2	82.1	83.0	83.9	84.8	85.7	86.5	87.4	88.3
13.4	70.6	75.0	79.4	80.3	81.2	82.1	82.9	83.8	84.7	85.6	86.5	87.3	88.2
13.5	70.5	74.9	79.3	80.2	81.1	82.0	82.9	83.7	84.6	85.5	86.4	87.3	88.1
13.6	70.5	74.9	79.3	80.1	81.0	81.9	82.8	83.7	84.5	85.4	86.3	87.2	88.1
13.7	70.4	74.8	79.2	80.1	81.0	81.8	82.7	83.6	84.5	85.4	86.2	87.1	88.0
13.8	70.3	74.7	79.1	80.0	80.9	81.8	82.6	83.5	84.4	85.3	86.2	87.0	87.9
13.9	70.3	74.7	79.1	79.9	80.8	81.7	82.6	83.4	84.3	85.2	86.1	87.0	87.8
14.0	70.2	74.6	79.0	79.9	80.7	81.6	82.5	83.4	84.3	85.1	86.0	86.9	87.8
14.7	69.8	74.1	78.5	79.4	80.2	81.1	82.0	82.9	83.7	84.6	85.5	86.4	87.2
15.0	69.6	74.0	78.3	79.2	80.0	80.9	81.8	82.6	83.5	84.4	85.3	86.1	87.0
16.0	69.0	73.3	77.6	78.5	79.4	80.2	81.1	81.9	82.8	83.7	84.5	85.4	86.2
16.8	68.5	72.8	77.1	78.0	78.8	79.7	80.5	81.4	82.2	83.1	83.9	84.8	85.7
17.0	68.4	72.7	77.0	77.8	78.7	79.5	80.4	81.2	82.1	82.9	83.8	84.7	85.5
18.0	67.8	72.1	76.3	77.2	78.0	78.9	79.7	80.5	81.4	82.2	83.1	83.9	84.8
18.9	67.3	71.5	75.7	76.6	77.4	78.3	79.1	79.9	80.8	81.6	82.5	83.3	84.1
19.0	67.3	71.5	75.7	76.5	77.4	78.2	79.0	79.9	80.7	81.6	82.4	83.2	84.1
20.0	66.7	70.9	75.0	75.9	76.7	77.5	78.4	79.2	80.0	80.9	81.7	82.5	83.4

(d) Minimum liquidation rates will of course have to vary up or down from those shown in the above illustrative tables, for differing rates of projected profit and for the different percentages for progress payments.

(e) It must be recognized that, on FMS contracts that include requirements for more than one country, it will be necessary to apply a different liquidation rate on delivery billings for each country's requirements for which a different profit percentage is expected. The different liquidation rates will be calculated in accordance with guidance contained in the preceding paragraphs.

(f) When a contract is subject to a limitation on General and Administrative (G&A) expenses eligible for progress payments because a contractor elected to use the special transition method provided in Cost Accounting Standard 410, an adjusted alternate liquidation rate will be used. The adjusted alternate liquidation rate will be established by subtracting the estimated G&A costs not eligible for progress payments from total estimated contract costs. For example, if the price is \$1,100,000, cost is \$1,000,000 and unbilled G&A \$47,600, the liquidation rate would be calculated as follows:

$$\frac{(1{,}000{,}000 - 47{,}600)}{1{,}100{,}000} \times 80\% = 69.26\%$$

Use 69.3%

E-513 Subcontracts. Subcontractors ought to be able to get progress payments from their customers on standards which are the same as those applicable to prime contracts. Contractors should be encouraged to extend progress payments to subcontractors on subcontracts which meet the standards for customary progress payments outlined in E-503.

The policies and standards for "unusual" progress payments set forth in E-505 are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on "unusual" progress payments made by a prime contractor to a subcontractor. In such cases, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in E-505, appropriate revision will be made in paragraph (j)(2) of the Progress Payment clause in 7-104.35(a) so as to permit inclusion of the unusual progress payments on the subcontract as part of the base for progress payments on the prime contract. Such revisions are deemed not to be deviations, and do not require the clearance called for by E-517(ii). Paragraph (a)(2) of the clause in 7-104.35(a) applies only to the "contractor's" costs mentioned in paragraph (a)(1)(i) of the clause. Paragraph (a)(2) of the clause does not apply to the progress payments to subcontractors mentioned in paragraph (a)(1)(ii) of the clause. The same policies and standards apply to the same numbered paragraphs in the Progress Payment clause in 7-104.35(b).

E-513.1 *Subcontractor Progress Payments*. When progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor shall include the full amount of his progress payment made to the subcontractor.

E-513.2 *Adaptation of Uniform Clause for Subcontracts*. Contracting officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the Progress Payment clause of prime contracts. The duty rests on the prime contractor to see to it that his subcontracts providing for progress payments, to be included in the base for progress payments pursuant to the provision of paragraph (j) of the clause in 7-104.35(a), conform to those provisions of the contract (paragraph (j) of the clause in 7-104.35(a)). In adapting the clause in 7-104.35(a) for use in subcontracts, to conform to paragraph (j) of the clause, the subcontract Progress Payment clause should have appropriate changes to reflect the position of the prime contractor as purchaser and of the subcontractor as vendor, and to indicate that the progress payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the Progress Payment clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in paragraph (d) of the clause , and the subcontract will not substitute the prime contractor for the Government as the holder of title under that paragraph of the subcontract. In that title paragraph of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data.

In the subcontract counterpart (clause paragraph (g)) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor," (paragraph (g)(i) of the clause) and to the "Government or the prime contractor" (paragraph (g)(ii) of the clause).

With regard to the subcontract counterpart of the "Special Provisions Regarding Default" (paragraph (h) of the clause) only the substance of the first twenty six words of that paragraph (with reference to the prime contractor substituted for "Government"), is required for conformity to the provisions of paragraph (j)(2) of the clause. The same policies and standards apply to the same numbered paragraphs in the Progress Payment clause provided in 7–104.35(b).

E–514 Progress Payments on Subcontracts Under Cost-Reimbursement Types of Prime Contracts. The policies, standards, and procedures of this Part 5 and its references are applicable to progress payments to subcontractors and suppliers on fixed-price types of subcontracts under cost-reimbursement types of prime contracts. For the prime contractor to be reimbursed for such progress payments, it is required that the subcontracts involving progress payments conform to these regulations. Specifically, the case must meet the standards for customary progress payments (E–503) and progress payment percentages must not exceed those authorized by E–503 (unless unusual progress payments to the subcontractor are approved by the procedure described in E–505), liquidation must conform to E–512, and the appropriate clause in 7–104.35 adapted for subcontract use (E–513.2) must be utilized.

E–515 Letter Contracts. When progress payments are to be made under letter contracts or similar contractual instruments (E–503, E–503.2), incorporation of the appropriate clause in 7–104.35 is required. See E–509.7, E–511.2, and E–511.3. Procedures for later events are outlined below.

(a) When the superseding definitive contract provides for progress payments (E–503, E–503.2) the letter contract costs, progress payments and unliquidated progress payments will be carried over to the definitive contract the same as if initially covered by the definitive contract instead of the letter contract. For the various percentages, see E–503.2, E–511.2, E–511.3, E–511.4, and E–512.

(b) If the letter contract is not superseded by a definitive contract providing for progress payments, for whatever reason, the unliquidated progress payments on the letter contract will be deducted from amounts otherwise payable to the contractor. If not so fully liquidated, the amount of unliquidated progress payments will be payable to the Government upon demand. See Part 6 of Appendix E.

E-516 Provisional Delivery Payments. Provision may be made for provisional billings and payments for items delivered to and accepted by the Government (i) on letter contracts contemplating a definitive fixed-price type of contract, (ii) on orders under basic ordering agreements, (iii) on spares provisioning documents annexed to contracts, and (iv) on fixed-price contracts for increases in contract price for unpriced equitable adjustments. These provisional delivery billing prices should of course be without prejudice to definitive or final contract pricing. They should be set conservatively so as to cover no more than the costs fairly attributable to items to be delivered and accepted, taking into account prospective total costs and quantities contemplated for (i) the letter contract and the definitive contract, or (ii) for all orders reasonably expected to be placed under the basic ordering agreement, or (iii) pursuant to the spares provisioning document and the contract of which it has become a part, or (iv) increase in price for unpriced equitable adjustments. These total provisional payments of course cannot exceed the amount obligated on the letter contract or on each order under a basic ordering agreement, incident to execution of a spares provisioning document, or the obligation based upon the Government's estimate of its liability for the equitable adjustment and compliance with the conditions of E-511.6. Provisional billings for deliveries are of course subject to deductions for liquidation of progress payments, (paragraph (b) of the clause in 7-104.35(a)).

E-517 Contract Financing Office Clearance. The following types of provisions for progress payments require submission through channels and prior approval by the contract financing office (E-212):

(i) Those involving progress payments at rates exceeding the uniform standard rates authorized by E-503 and E-504, unless developed in accordance with E-530;

(ii) Those involving deviations, as defined in E-509.9;

(iii) Those exceptional cases involving unusual risks, described in E-212;

(iv) Those involving contractors as to whom it is known that within the preceding 12 months (1) request for advance payments has been denied for financial reasons by the contract financing office, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance payment to the contractor has lapsed or has been withdrawn;

(v) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List"; and

(vi) Those involving contracts in which progress payments were not specifically provided for at the time such contract was initially entered into, and which payments will exceed $25,000,000 (*see E-500.3 and E-505*).

E-518 Coordination. The coordination described in the third subparagraph of E-505 is required for all cases mentioned in items (i), (ii), and (vi) of E-517.

E-518.1 *Control Lists.* To give effect to E-517(iv), pertinent information will be exchanged between the several contract financing offices and distributed through normal channels to contracting officers.

E-518.2 *Hold-Up List.* To give effect to E-517(v), and for other proper purposes, the "Hold-Up List" there mentioned will be distributed through normal channels to contracting officers.

E-519 Contractor's Request. The Contractor's Request for Progress Payment (DD Form 1195) set forth in F-200.1195, with any supporting information that may be reasonably required will be used in lieu of an invoice when requesting progress payments on contracts containing the Progress Payments clause (7-104.35) and on contracts containing any deviation from that clause approved pursuant to E-517 and E-518. The use of this form is subject to the instructions set forth on the reverse thereof.

E-520 Audit. For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (E-506) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt payment of proper progress billings, audit before the making of progress payments will be kept to the minimum necessary for the protection of the interest of the Government. Preaudit, that is, audit before the making of a progress payment, will be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Where the adequacy and reliability of the contractor's accounting system and controls have been established in accordance with E-506, there shall be no requirement for preaudit of the first progress billing under new contracts. Postreview or postaudit will be made when considered desirable by the contracting officer to determine the validity of any progress payment made on the contractor's certifications.

E-521 Administration—General. Progress Payment clauses cannot be self-executing, and require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontracts), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract.

E-521.1 *Extent of Supervision*. The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

E-522 Adjustments—Retroactive Price Reduction—Refunds. When a retroactive price reduction has been made effective, *i.e.*, by supplemental agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of paragraph (b) of the clauses 7-104.35(a) & (b) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (1) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (2) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and in connection with voluntary refunds on such contracts.

E-523 Maximum Unliquidated Amount. When the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected by the ordinary method (E-512.1), the amount of unliquidated progress payments should automatically stay within the maximum limits stated in paragraph (a)(4) of the clause in 7-104.35(a) and paragraph (a)(3) of the clause in 7-104.35(b). For either method of liquidation (E-512.2, or E-512.2 and E-512.3) whenever the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or a loss to the contractor is indicated, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maximum amounts permitted by paragraph (a)(4) of the clause in 7-104.35(a) and paragraph (a)(3) of the clause in 7-104.35(b). Also, when the alternate method of liquidation is used (E-512.2, E-512.3), it may occur that actual costs and future costs of performance are higher than the estimated costs used to establish a liquidation rate. In such cases (paragraph (c)(vi) of the clauses in 7-104.35), appropriate increase of the liquidation percentage, with or without reduction of the rate of progress payments or suspension of progress payments (E-524) will be necessary to adjust for any liquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of paragraph (a)(4) of the clause in 7-104.35(a) and paragraph (a)(3) of the clause in 7-104.35(b), and to assure the adequacy of future liquidations. As required, the services of Defense Contract Audit Agency should be utilized to the fullest extent available, together with the services of qualified cost analysis and engineering personnel. See E-519.

E-523.1 ***Quarterly Statements on Price Revision Contracts.*** **Quarterly statements submitted by contractors pursuant to the Limitation on Payments provisions of price revision contracts (7-108, 7-109) should be compared from time to time with the Contractor's Request for Progress Payments in order to assure so far as reasonably possible that costs attributed to delivered items on the quarterly statements are excluded from the costs set forth as the basis for unliquidated progress payments (E-519).**

E-524 Suspension or Reduction of Payments—General. In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss, proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions. Paragraph (c) of the clauses in 7-104.35(a) & (b) provides that progress payments may be suspended or their rate of liquidation may be increased, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by that paragraph are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. That paragraph will be administered with these purposes in mind. Action taken pursuant to that paragraph will be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under that paragraph will be in writing.

E-524.1 ***Failure To Comply With Contract.*** **Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to paragraph (c)(1) of the clauses in 7-104.35 for failure to**

comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such cases, see paragraph (c) of the Default clause in 7-103.11 | Compliance with the material requirements of the contract, within the meaning of paragraph (c)(1) of the clauses in 7-104.35 includes compliance with all provisions of the Progress Payment clause.

E-524.2 *Unsatisfactory Financial Condition.* If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in paragraph (c)(ii) of the clauses in 7-104.35 is found to exist, arrangements reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of paragraph (c)(ii) of the clauses in 7-104.35, performance of the contract includes full liquidation of progress payments. Further payments will be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

E-524.3 *Excessive Inventory.* When inventory allocated to the contract is found substantially to exceed reasonable requirements (paragraph (c)(iii) of the clauses in 7-104.35), the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in items 9 and 10 of the contractor's request set out in DD Form 1195. If that is not regarded as sufficient in a particular case, or if the adjustment in items 9 and 10 of the request will not accomplish full correction, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

E-524.4 *Delinquency in Payment of Costs of Performance.* The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (paragraph (c)(iv)) of the clauses in 7-104.35 may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably foreseeable loss to the Government, further progress payments and other payments will not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (1) cure the contractor's delinquencies in payment of his costs of contract performance, (2) avoid further delinquencies, and (3) reasonably assure completion of the contract without loss to the Government. (See also E-524.3.) The standards in paragraph (a) of the clause in 7-104.35(a) and paragraph (a) of the clause in 7-104.35(b) for the exclusion of pension contribution costs from progress payment computations will govern a determination of delinquency in the ordinary course of business with respect to these pension contribution costs, without regard to other.

provisions in E-524. Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performance so long as they are disputed.

E-524.5 *Fair Value of Undelivered Work.*

(a) In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (paragraph (c)(v) of the clauses in 7-104.35), the principles stated in E-523 are applicable. In determining action, if any, to be taken, the contracting officer (utilizing available audit, engineering, inspection, and cost analysis services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion of performance, and the amount remaining unpaid under the contract. If the contracting officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in E-524.2 and E-524.4. This fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. See also E-525.1.

(b) If it is determined that the total costs incurred plus the estimated additional costs to complete the contract will exceed the contract price, the purchasing office will be promptly advised and all further progress payments will be adjusted using a loss ratio factor. Principles and practices discussed in E-524 will be followed in adjusting progress payments. For the purpose of computing the loss ratio factor, a revised contract price will be used consisting of the current contract price, (the current contract price of fixed-price incentive contracts for this purpose is the current ceiling price) plus unpriced contractual actions, such as change orders and unpriced orders, to the extent obligated. The revised contract price divided by the sum of the total costs incurred to date (item 12a) plus the estimated additional costs to complete (item 12b) will be the loss ratio factor.

When computing progress payments for loss contracts, the *Contractor's Request for Progress Payment* (DD Form 1195) instructions will be modified as follows:

Item 5 — Current contract price plus unpriced contractual actions, such as change orders and unpriced orders, to the extent obligated.

Item 11 — The sum of Items 9 and 10 will be multiplied by the loss ratio factor and the result (recognized costs for progress payments) will be entered on Item 11.

Item 20a — Contract price of items delivered, invoiced and accepted to the date in heading of Section II. Note that average unit contract price is equal to the projected average unit cost multiplied by the loss ratio factor. Consequently, the maximum cost that may be recognized for the items delivered is equal to the contract price of the items delivered.

DEFENSE CONTRACT FINANCING REGULATIONS

The contracting officer shall utilize, as required, audit and technical services and other pertinent data and management reports in determining the amount and costs of work completed and the estimated amount and costs of uncompleted work under the contract. In the event that the figures submitted by the contractor in his request for progress payment are at variance with the determination of the estimated loss made by the contracting officer, the latter shall (i) adjust the figures in accordance with his own determination, (ii) advise the contractor in writing and (iii) adjust all further progress payments in accordance with his calculations until the difference is resolved. The contracting officer will prepare a supplementary sheet which will be attached to the *Contractor's Request for Progress Payment* showing the (i) revised contract price where there are outstanding unpriced actions to be considered, (ii) calculation of the loss ratio factor and (iii) alternate amount to be used as Item 13. An example of such a supplementary sheet is as follows:

Example: E-524.5 Loss Contracts

Section I — DD Form 1195 Supplementary Sheet		
Item 5 — Contract Price		$ 950,000
Change orders and unpriced orders to extent obligated		50,000
Revised Contract Price		$ 1,000,000
Section II		
Item 12a — Total costs incurred to date	$1,080,000	
Item 12b — Estimated Additional Costs to Complete	120,000	$ 1,200,000

Loss Ratio Factor $\frac{1,000,000}{1,200,000} = 83.3\%$

Item 11 — Total Costs Eligible for Progress Payments	$ 900,000
Loss Ratio Factor	x 83.3%
Recognized Costs for Progress Payments	$ 749,700
Item 6a — Progress Payment Rate	x 80.0%
Item 13 — Alternate Amount to be Used	$ 599,760
Section III	
* Item 20a — Contract Price of Items Delivered	$250,000
Item 20b — Recognized Costs Applicable to Undelivered Items ($749,700 - $250,000)	$499,700

This amount will be the same as item 21a since the costs of such items will exceed the contract price.

E-525 Government Title. Since the clauses in 7-104.35 give the Government title to all of the materials, work in process, and finished goods under contracts, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances. The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

E-525.1 *Loss, Theft, Destruction, or Damage*. Paragraph (e) of the clauses in 7-104.35 is not intended to apply to normal spoilage. The risk of loss as to property affected by the Progress Payment clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the Progress Payment clause, the Default clause, or the Termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on cost allocable to lost, stolen, or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed, or damaged property. See, however, paragraph (c)(v) of the clauses in 7-104.35, as to future payments on the contract after such loss, damage, theft, or destruction.

E-525.2 *Government Property.* Contract provisions referring to or defining liability for Government property do not apply to property to which the Government has title solely pursuant to the provisions of the Progress Payment clauses (paragraph (d) of the clauses in 7-104.35). Property to which the Government has title solely pursuant to the Progress Payment clauses is not subject to Appendices B and C of this Regulation.

E-525.3 *Special Tooling.* When the contractor furnishes special tooling as defined in 13-101.5, pursuant to a special tooling clause (see 7-104.25), and such special tooling is not to be delivered to the Government as an end item under the contract, the handling and disposition of such special tooling will be governed by the Special Tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the progress payment clause of the contract.

E-525.4 *Termination for Convenience of the Government.* After the giving of notice of termination under contract provision for Termination for the Convenience of the Government, the property to which the Government has title pursuant to the Progress Payment clause and which is a part of termination inventory will be acquired or disposed of in accordance with the provisions of the Termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the Termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the Progress Payment clause of the contract.

E-525.5 *Scrap—Excess Property.*

(a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the Progress Payment clause. Permission of the contracting officer for such disposal of scrap is not required. With the permission of the contracting officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the Progress Payment clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated from the costs of contract performance, and the contractor shall be required to repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all his obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the Termination clause or the Special Tooling clause or the Government Property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and generally accepted accounting principles and practices, and thus outside the scope of the Progress Payment clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

E-526 Consideration for Progress Payments—Awards. When a Progress Payment clause is included at the inception of a contract, there shall be no separate consideration for the Progress Payment clause. The worth of the Progress Payment clause to the contractor is expected to be reflected in one or both of (i) a bid or negotiated price that will be lower than such price would have been if provision had not been made for progress payments, or (ii) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been if provision had not been made for progress payments.

E-527 Amendments to Provide Progress Payments. There should be ordinarily no occasion to amend contracts to provide for progress payments unless there has been material change from the circumstances contemplated by the parties when invitations for bids were issued or the contract was entered into without progress payment provisions. However, cases do occur (i) in which the actual lead time or preparatory period between the beginning of work and the first delivery substantially exceeds the estimated lead time and in fact runs or will run over six months (E-503) or (ii) in which unusual circumstances bring about unexpected substantial accumulation of predelivery costs having material impact on the contractor's working funds (E-505). These cases may arise from occurrences such as (i) uncertainties or errors in specifications, (ii) contract change notices, (iii) Government delays in testing, inspection, furnishing of material or equipment, furnishing of stock numbers, packaging or shipping instructions or shipping documents, or completion of contract supplements, (iv) stretch-outs or stop-work orders, (v) performance difficulties of subcontractors or suppliers, and (vi) causes beyond the control and without the fault or negligence of the contractor, of the kinds mentioned in paragraph (c) of the clause in 7-103.11. In these kinds of cases, requests of contractors for amendments to provide progress payments should be considered promptly, in the light of the circumstances then existing. If the circumstances then existing approximate conditions under which progress payments would have been properly provided in conformity with these regulations at contract inception, if the new circumstances had been foreseen, progress payments should be provided by amendment. In this connection, see particularly E-202, E-204, E-205, E-206, E-207, E-210, E-210.1, E-505, and E-528. In conformity with the standards and procedures of E-505, unusual progress payments may be provided by amendment.

However, a provision for unusual progress payments not specifically provided for in a contract at the time such contract was initially entered into and which may result in unliquidated unusual progress payments exceeding $25,000,000 shall not be inserted in a contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments.

For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. In addition, no agreement for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into, shall be entered into without the prior written coordination of the ODDR&E if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for such payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

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E-528 Consideration for Amendments Concerning Progress Payments. Contracts may not be modified except in the interest of the Government. Contracts may be amended to provide for progress payments or larger progress payments or reduced liquidation rates only when the contract already provides for the right of the Government to so amend or when the amendment provides new and valuable consideration moving to the Government. Appropriate price reduction may provide this consideration. In the varying circumstances of individual cases, the consideration for progress payments need not necessarily be monetary. Agreements by the contractor, incorporated in such an amendment, for the benefit of and substantially advantageous to the Government, may constitute sufficient consideration for an amendment providing for progress payments. When estimated financing costs have been included as an element (whether or not identified) in the contract price, it is fair to expect elimination of the applicable portion of that element of the price when progress payments or larger progress payments or reduced liquidation rates are provided by amendment. The fair and reasonable consideration for the progress payment amendment should approximate in a value as nearly as practically ascertainable the amount by which the contract price would have been smaller if the progress payment amendment had been contained in the contract in the first instance. In the absence of definite information on this point, pertinent factors for estimating the fair and reasonable amount of consideration would include (i) the amounts of progress payments expected to be outstanding for estimated periods of time, (ii) the cost of equivalent working funds to the contractor, and (iii) the estimated profit rate expected to be earned by contract performance. If not accomplished by a contract price reduction, other concessions or agreement by the contractor, advantageous to the Government and incorporated in the amendment, may be fairly evaluated and accepted as being of value reasonably equivalent to a price reduction. This consideration should be such as is fair, equitable and reasonable in the light of the circumstances of each case. See E-527. This consideration should be for the progress payment amendment, and there shall be no provision for interest or other specific charge for progress payments.

E-529 Milestone Billing Arrangements. The policy, purpose, criteria for use, contractual implementation, and approval of milestone billing arrangements are set forth below.

E-529.1 *Policy.* It is the policy of the Department of Defense (DoD) that contractors maintain an appropriate investment in their contract work-in-process inventories at all times. Authorities responsible for approving milestone billing arrangements will evaluate each such request on its individual merits with the DoD policy in mind.

E-529.2 *Purpose.* A milestone billing arrangement is a measure taken to alleviate inordinately high contractor financing that would otherwise result by limiting payments to customary progress payments and delivery payments in the performance of a defense contract with exceptionally long lead time between initiation of contract performance and commencement of deliveries of contract end items. Application of the milestone billing procedures will result in periodic payments to the contractor within limitations and under such conditions set forth in the contract, upon the verified completion of distinct items of service or accomplishment of significant events.

E-529.3 *Criteria for Use.*

(a) For other than small business concerns, milestone billing arrangements are limited to fixed-price type contracts in excess of $5 million with exceptionally long lead time (normally 12 months or more) between initial incurrence of costs under the contract and delivery of the first end item. For small business concerns, no dollar restriction applies but the lead time before first delivery should normally be at least six months.

(b) The contract will not provide unusual progress payments or advance payments.

(c) The established milestone events will lend themselves to ready determination of accomplishment.

(d) The milestone billing amounts will be based upon estimates of cost to perform the individual events.

(e) The milestone events and billing amounts shall be compatible with the contractor's accumulation of contract costs.

(f) The number of milestone events will be such that billings will occur no more frequently than monthly.

E-529.4 *Contractual Implementation.* Contracts that contain milestone billing arrangements will include the requirements set forth below.

(a) Only progress payments will be made during the first six months of contract performance (four months for small business concerns), and payments for milestone events will be limited to subsequent periods. Progress payments are authorized throughout the contract life in accordance with standard procedures; however, milestone payments will not normally be made after deliveries of major end items commence, upon which milestone billings were being made. In the event the period between delivery of any major end item and subsequent sequential end item delivery exceeds three months, or when additional deliverable units are added to an existing contract, milestone payments can continue to be made as mutually agreed for appropriate events.

(b) The contractor's request for payment of a milestone event will include a statement of the costs of performing the event that is supported by the contractor's accounting records. Failure to comply with this requirement will invalidate authority for milestone payments. The amount to be paid the contractor upon completion of a milestone event will be based on either the value assigned in the contract or actual costs, whichever is less.

(c) Completion of milestones must be certified by the contractor and the contract administration activity.

(d) Conversion to the alternate method of liquidating progress payments may be effected in accordance with the policy and guidelines specified in E-512. However, this aspect will be administered to ensure that, prior to delivery of end items, *total* payments by the Government (progress plus milestone) do not exceed the contractor's total incurred contract costs. Contractors will be required to execute certificates to this effect.

E-529.5 *Subcontracts and Contract Amendments.* Subcontracts and amendments to prime contracts that incorporate milestone billing arrangements are also subject to these criteria, contractual implementation, and approval policies.

BEST DOCUMENT AVAILABLE

E-529.6 *Approval.* Because milestone billing arrangements are measures to accommodate particular situations, special review and approval of such arrangements are considered necessary. Responsibility and authority for approving milestone billing arrangement terms and conditions shall be the Assistant Secretary responsible for the Comptroller function in each Military Department; such authority may be delegated to a level no lower than the contract financing office at Departmental Headquarters.

E-530 Flexible Progress Payments.

E-530.1 *Background and Policy.* Paying progress payments assists in financing a contractor's performance and reduces the contractor's investment in its work in process inventory. The actual investment held by a contractor in work in process inventory is influenced by a number of factors in addition to progress payments, such as delivery schedules, cash management practices, and Government payment practices. Progress payment amounts that are determined by using uniform, standard progress payment rates (i.e., 90% or 95% under E-503) are insensitive to these other factors influencing investment and, as a consequence, result in investments by contractors in work in process inventory that vary among contractors and across contracts; on the other hand, flexible progress payment rates (expressed as a percentage that will be applied to costs to determine the amount payable as a progress payment in the same manner as uniform, standard progress payment rates) are designed to tailor more closely the progress payment rate to the cash needs for financing performance of a particular contractor for a given contract.

For flexible progress payments, cash needs are measured and projected in relation to investment underlying the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor to complete performance of the contract, and the contractor's investment is the weighted average of the amount not paid by the Government. The Department of Defense (DoD), as a matter of policy, has concluded that a contractor should retain at least a 5% investment in work in process inventory over the life of the contract. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than 5%. This progress payment rate is to be determined by the DoD Cash Flow Computer Model. In no event will the progress payment rate be greater than 100%, or less than the uniform, standard progress payment rate that would have been applied to the contract absent flexible progress payments.

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Contracting officers shall use a flexible progress payment rate in lieu of uniform, standard progress payment rates for the purpose of computing monthly progress payments if requested by the contractor, if the criteria in E-530.3 are met, and if the contractor agrees to the requirements of this section. No more than one progress payment rate may be applied to the contract at any given time. Flexible progress payments shall be regarded as customary progress payments, as defined in E-503.

E-530.2 *DoD Cash Flow Computer Model.* The flexible progress payment rate shall be determined through application of the DoD Cash Flow Computer Model, available to contracting officers on the COPPER IMPACT computer time sharing network under the computer file name "CASH." The executing command is "RUN CASH." The model takes into account key cash flow factors, such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. Operating instructions and cash flow data requirements are retrievable within the model in a conversational mode. Contractors may obtain copies of the DoD Cash Flow Computer Model User's Guide (including the related computer program) from the Defense Technical Information Center, Building 5, Cameron Station, Alexandria, VA 22314. Contracting officers may not grant contractor access to Government leased COPPER IMPACT time sharing computer network.

E-530.3 *Criteria for Use.* Contractors who submit certified cost or pricing data, as defined in 3-807.3, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments. Formally advertised contracts are not eligible for flexible progress payments. Flexible progress payments are not available for contracts awarded and performed entirely outside of the United States, its possessions and territories.

E-530.4 *Procedures.* Contractors will furnish to the contracting officer cash flow data in the form and context specified by the DoD Cash Flow Computer Model. These data include: actual and projected incurred cost broken down by element of cost and by month for the duration of the contract, float times for each element of cost, progress payment receipts and delivery payment receipts and associated contract prices and profit percentage. Contracting officers will verify the cash flow data in accordance with normal procedures used to verify contractor cost and pricing data.

Administrative contracting officers are encouraged to establish advance agreements at contractor locations for float and payment lag which are common to several contracts. Such agreements should be established when administratively practical.

E-530.5 *Progress Payment Rate Redetermination.* A redetermination of the flexible progress payment rate shall be made upon the request of the Government or the contractor if measurement of the contractor's cumulative investment in work in process inventory using actual and projected cash flow data indicates an investment level above 7% or below 3%. The cash flow computer model is designed to generate a progress payment rate that yields a target investment of 5%, based on a weighted average. Accordingly, there should normally be no need to request actual and projected contract cash flow data unless delivery schedules are revised, Government progress payment lag times are substantially changed from those used in the establishment of the progress payment rate, or substantial new work (e.g., option) is added to the contract.

E-530.6 *Administration.* Flexible progress payments will be administered in accordance with the provisions of E-521 through E-528.

E-530.7 *Subcontractor Progress Payments.* As noted in E-513, the standards for progress payments to subcontractors ought to be the same as those applicable to prime contractors. Accordingly, subcontractors who request a flexible progress payment rate, meet the criteria in E-530.3 and agree to the requirements of this section are to receive a flexible progress payment rate. The subcontract flexible progress payment rate will be determined by the prime contractor without regard to the progress payment rate in the prime contract. The DoD Cash Flow Computer Model and associated procedures will be used by the prime contractor and a reasonable review of the cash flow data provided by the subcontractor will be made. Procurement System Reviews conducted in accordance with 23-100 will include a review of a prime contractor's practices in this area.

E-530.8 *Contractual Implementation.* When a flexible progress payment rate is used in the contract, contracting officers will include in the schedule the clause at 7-104.35(c).

DEFENSE CONTRACT FINANCING REGULATIONS

Part 6—Contract Debts—Interest—Deferred Payments

E-600 Scope. This Part provides uniform policies and procedure for the ascertainment and collection of contract debts, for the charging of interest thereon, for deferral of payments, for compromise and termination of certain claims, and for reporting of contractor bankruptcies. Except as specified herein, it applies to all indebtedness arising in connection with contracts for procurement of property or services, contracts for sale or use of Government property, and from charges for Government services.

E-600.1 Exclusion and Limitation. This Part does not apply to claims of the Government against military or civilian employees or their dependents, arising in connection with current or past employment by the Government. Its provisions concerning interest and deferral of payments and compromise or termination of certain claims do not apply to indebtedness resulting from statutory renegotiation, nor to claim against common carriers for transportation overcharges or freight or cargo loss or damage.

E-600.2 *Subcontractors.* Insofar as possible, this Part 6 shall be applied to subcontractors who are indebted to the Government, the same as to prime contractors. Accordingly, for the purpose of this Part 6 (except E-620 and E-604.1) the terms "contract" and "contractor" include subcontracts and subcontractors, and the terms "debt" and "indebtedness" include the debts of subcontractors to the Government.

E-600.3 *Purchasers, Lessees, Bailees and Others.* For the purpose of this Part 6, the term "contract" includes agreements or arrangements for the sale or use of Government property of any kind, or for the receipt of Government services, and the term "contractor" includes the parties to such arrangements or agreements relating to Government property or services.

E-601 Examples. Indebtedness to the Government occurs in various ways. Examples include:

(i) Damages or excess costs incident to defaults in performance;
(ii) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material;
(iii) Delinquency in rentals;
(iv) Delinquency in payment of price of property purchased from the Government;
(v) Expense of correction of defects;
(vi) Overpayments incident to errors in quantity, deficiencies in quality, or errors in billing;
(vii) Retroactive price reductions resulting from contract provisions for price redetermination or for determination of prices under incentive type contracts;
(viii) Delinquency in payment of charges for Government services;
(ix) Delinquency in payment called for by agreement or arrangement for deferral or postponement of payments;
(x) Statutory renegotiation. See E-600.1.

E-602 Contracting Officer and Disbursing Officer. Primary responsibility for determination and collection of a contract debt is on the contracting officer (see

1-201.3), except in those instances in which a disbursing officer has this primary responsibility. A disbursing officer has such primary responsibility whenever erroneous payments or overpayments have been made by the disbursing officer, in excess of the amounts to which the contractor was entitled under the terms of the contract at the time of such payment. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due.

For the purposes of this Part 6, disbursing officers are those officers or officials designated to make payments under a contract, or to receive payments of amounts due under the contract, including finance and accounting officers at installations where integrated accounting is in effect.

E-602.1 *Cooperation and Assistance*. The utmost cooperation is required among auditing, contracting and disbursing officers, and by all of them with the contract financing offices (E-212), in order to protect the public interest by the proper and effective use of all available means for the timely discovery and ascertainment, and full and prompt collection of indebtedness.

E-602.2 *Assistance to Contract Financing Office*. It is necessary that audit personnel, disbursing officers and contracting officers, including contract administration personnel, comply promptly and effectively with requests of the contract financing office (E-212) for information pertaining to debts, for local collection assistance, and for assistance in the establishment and administration of debt deferment agreements.

E-602.3 *Requests for Withholding*. Before a debt is placed on the Hold-up List (E-623) or before distribution of a new listing, it is expected that the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name) or office designated for contract administration", and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompanied by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction. |

E-603 Prompt Ascertainment and Collection—Controls—Records. Delays in determining definitely the amounts payable by contractors to the Government, or delays in collection may result in losses to appropriations, or difficulty in effecting later repayment, or loss to the Government from later inability to collect. Delays in determining amounts due, or in obtaining timely payment, are in effect extensions of credit to contractors.

The amount of all indebtedness to the Government must be ascertained promptly and collected expeditiously. Responsible personnel shall utilize vigorously all proper means available to them for collection of indebtedness as rapidly as possible. Practices for ascertainment and collection of debts shall be comprehensive, dynamic, and as uniform as practicable. Collection practices will give full recognition to the need for internal coordination and cooperation, and the need for timely, aggressive and persistent demand processes, including personal contacts and telephone calls, all giving consideration to such factors as (a) utilization of all collection resources available to the agencies, (b) the tone, frequency and number of demands, (c) points of diminishing return, and (d) determination of uncollectibility and action pursuant thereto. In the absence of deferment agreement made by the contract financing office (E-611), report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

On the need for prompt ascertainment and payment of amounts payable to contractors, see E-201 and E-202.

E-603.1 *Accounting Controls*. Adequate accounting controls must be maintained.

E-603.2 *Debt Records*. At the time a debt is established or determined, the office with primary responsibility (E-602) shall establish an appropriate control record for each debt, to insure that the debt is collected within not more than 45 days or appropriately transferred to the contract financing office. (See also E-611.)

E-603.3 *Outline of Records*. The minimum information to be shown by the contract debt record should be:

(a) Name and address of contractor.
(b) Contract number, if any.
(c) Description of debt.
(d) Amount of debt, and appropriation to be credited.
(e) Date debt determined.
(f) Date of demands for payment.
(g) Amounts and dates of payments.
(h) Date appeal filed or action brought in the Court of Claims under the Disputes clause if filed prior to transfer.
(i) Status of collection, such as:
  (i) Reported to disbursing officer (name, location, and date).
  (ii) Request made to disbursing officer for withholding (or for temporary non-withholding).
  (iii) Withholding requested of other offices (date and office).
  (iv) Deferral or installment payment arrangement requested.
  (v) Deferral or installment request reviewed.
  (vi) Supplemental information requested to support deferral request.
  (vii) Transferred to contract financing office.

E-603.4 *Records After Transfer*. Upon transfer of a case to the contract financing office (E-611), the debt record maintained by a contracting officer shall be closed by appropriate reference to the date of transfer.

When a disbursing officer is primarily responsible for collection (E–602), he should maintain his record of the debt until he receives payment or is advised of collection.

In all cases transferred to a contract financing office (E–611), that office shall establish and maintain an accounts receivable record showing all pertinent information relating to the debt, including an indebtedness and payment record reflecting current status, to be closed upon collection or compromise, or referral of the case to the General Accounting Office or to the Department of Justice.

E–603.5 *Deferral Request Records and Copies.* When the contract financing office enters into a deferral agreement (E–611) or a compromise (E–625), it will furnish copies to the appropriate contracting officer and disbursing officer when deemed necessary. When the contract financing office denies a deferral request, or does not reach agreement with a contractor on a deferment, it will give timely notice to the appropriate contracting officer and disbursing officer when deemed necessary.

E–604 Cash Collection—Non-Postponement. Except as expressly authorized in this Part (E–614, E–615, E–616, E–623 and E–625), there shall be no postponement of payment of indebtedness, or compromise of indebtedness, and amounts due shall be paid in one sum upon demand, in cash or by credit against existing unpaid billings due to the contractor.

E–604.1 *Tax Credits.* Applicable tax credits in which contractors are entitled under the Internal Revenue Code (presently Section 1481 of the Internal Revenue Code of 1954) will be taken into account in the collection of indebtedness. Any applicable tax credit under the Internal Revenue Code will be treated as having been applied in reduction of the amount of the debt as of the date when interest first began to accrue upon the debt. The amount of applicable tax credit, if any, is as shown by tax credit certificate issued by a District Director of Internal Revenue upon application therefor by the contractor. For purposes of calculation of the amount to be collected or withheld for collection, whether or not the debt or the amount thereof is disputed, the contractor's estimate of the tax credit that will be applicable will ordinarily be accepted, pending issuance of the tax credit certificate. Verification of contractors' estimates of the tax credit, including evaluation of any questions with regard to applicability of tax credit to the circumstances of particular cases, will be accomplished by the contract financing office when and to the extent deemed prudent.

Except as required in connection with statutory renegotiation, there shall be no agreement or arrangement for tax credits in connection with debts arising under subcontracts.

E–604.2 *Price Revision Contracts—Quarterly Statements.* For price-revision (redetermination or incentive) contracts containing a "Limitation on Payments" clause (see 7–108 and 7–109), the quarterly statements called for by that clause are an important means of ascertaining and collecting interim refunds of over payments. The furnishing of proper quarterly statements in conformity with contract provisions is a material obligation of contractors and a significant element of contract performance. Procedural arrangements must be established and maintained for each such case to insure that the required quarterly statements are received when due, that those statements conform to the requirements of the applicable contract clause, that refunds shown by those statements are promptly collected, and that there is sufficient review of those statements from time to time to identify and bring about appropriate correction of inaccuracies. Whenever a required quarterly statement is not submitted when due, notice of the delinquency should be given at once to the contractor, and further payments on the contract should be suspended until the contractor corrects the delinquency by furnishing satisfactory quarterly statements and making such refund, if any, as may be appropriate.

For the purpose of determining accuracy of these quarterly statements, the statements should be compared from time to time with contractors' requests for progress payments (E–519, DD Form 1195). At any given time, costs attributed to work that has not been delivered and accepted (to support outstanding progress payments), cannot properly be attributed also to delivered and accepted items for the purposes of these quarterly statements. See E–523.1.

E–605 Merits of Claims. In determining an amount due to the Government under a contract, full and fair consideration will be given to the merits of the Government's claim and of all known claims of the contractor that may serve to reduce the amount to which the Government is fairly entitled.

E–606 Negotiations. Negotiations to determine indebtedness must not be unduly prolonged.

E–606.1 *Unilateral Determinations.* The responsible officer or official will promptly make a proper finding and determination, consistent with the contract and supported by sufficient evidence, if the contractor (1) is delinquent in the furnishing of pertinent information required from it pursuant to the contract, or (2) fails to negotiate expeditiously in accordance with a contract provision, or (3) fails to agree on fair and reasonable prices within a reasonable time after the beginning of price revision negotiations, or (4) fails promptly to sign an interim memorandum evidencing a negotiated pricing agreement involving refund, or (5) fails expeditiously to execute an appropriate supplemental agreement reflecting the result of negotiations. See E–608.

E–606.2 *Amount Fixed Unilaterally.* The amount of indebtedness fixed unilaterally shall be such as is proper under the circumstances, and must not exceed the amount which would have been considered acceptable for a negotiated agreement fixing the amount of the indebtedness. The amount so determined shall be based on the merits of (E–605), and consistent with the contract (E–606.1). At or before the time of making demand (E–608) by a contracting officer, the contracting officer shall make appropriate decision under the Disputes clause of the contract and shall give notice of the opportunity to appeal as provided by 1–314.

E–607 Memorandum of Pricing Agreement—Refunds. When prices that involve refunds have been agreed upon in negotiations under price revision types of contracts, the agreed prices shall be evidenced contemporaneously by interim memorandum signed by the authorized negotiators for the Government and for the contractor. Such memorandum will be made without prejudice to final pricing if the negotiated price is subject to review by higher authority of the Government or of the contractor. Computation of the amount of refund resulting from such pricing agreement shall be done speedily, without awaiting itemization of adjustments of past billings, accounting adjustments, or the furnishing of adjusted invoices. Demand for payment shall be made as soon as the amount of refund due has been computed, and will conform to E-608 below. After negotiations, appropriate supplemental agreements shall be prepared expeditiously and executed without delay.

E-608 Demand. Demands for payment of contract debts resulting from other than a termination for default shall be made by the office which first determines an amount due whether it be the Contract Administration Office, the Procuring Office, the Disbursing Office, or the selling office/agency and will be handled in accordance with the regulations of the department or agency to which that office is assigned. A copy of the demand will be provided to the payment office cited in the contract and designated to receive payment. Demands for payment of contract debts resulting from a termination for default, *e.g.*, excess costs, unliquidated progress payments, and liquidated damages, shall be made by the Procuring Contracting Officer and shall direct the debtor to make payment to an office of the Procuring Department. If this action will result in the payment being made to a payment office other than the one cited in the contract, the assigned ACO will issue a contract modification designating the new payment office. Demands shall (i) appropriately explain the indebtedness, (ii) inform the contractor that any amount not paid within 30 days from the date of the demand will bear interest from the date of such demand (or an earlier date established pursuant to the contract) at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, to be adjusted only when and as provided by this Part 6, and (iii) notify the contractor that it may submit a proposal for postponement of payments if immediate payment is not practicable or if the amount is disputed. Transfer of the indebtedness to the Contract Financing Office of the appropriate department or agency will be accomplished pursuant to the provisions of paragraph E-611 upon failure to effect collection in accordance with the terms thereof.

For decision pursuant to the Disputes clause and notice of opportunity to appeal, see E-606.2. When paragraph (iii) of the clause in 7-104.39 is operative to fix the date when a debt is due, the transmittal mentioned in said paragraph of the clause shall include or be accompanied by the demand required by this paragraph E-608.

E-608.1 *Routine Offset.* When a disbursing officer with primary responsibility for collection (E-602) determines an amount to be due, and has on hand for payment at the time bills payable to the contractor and available for offset against the amount due from the contractor, the disbursing officer should make appropriate offset. In these cases, explanatory notice to the contractor would take the place of demand (E-608) on the contractor, to the extent the debt has been reduced or eliminated by the offset. Similar withholding and offset is also expected when a debt is reported to the disbursing officer by a contracting officer, except as provided in E-610.2.

E-608.2 *Special Demand by Contract Financing Office.* If no previous demand has given notice of interest charge, the first demand made by the contract financing office (E-212) will give notice of interest charge to be effective from the initial demand previously made, on amounts not paid before the expiration of 30 days after the date of the first demand.

E-608.3 *Excess Costs for Default*. For procedures in connection with default, see Section VIII, Part 6. As indicated by 8-602.6(c), indebtedness for excess costs occurs when repurchase is effected at a price in excess of the price of the supplies terminated. This is re-emphasized by the clause in 7-104.39. The demand for payment (E-608) shall be made as soon as the repurchase contract has been entered into. The possible necessity for furnishing payment data under the replacement contract, in the event that the excess cost debt is later referred to the General Accounting Office as administratively uncollectible, must not be permitted to delay actions pursuant to this Part 6.

E-609 Reduction of Amount—Interest. When, after demand giving notice of interest charge, the amount demanded is reduced to a lesser amount, or the debt demanded is replaced by a lesser debt, interest shall be charged on the reduced or substituted lesser amount at the rate indicated in 7-104.39 from the date specified by the first demand made for payment of the higher amount. No agreement may be made to the contrary.

E-610 Withholdings — Information Exchange — Assignments. Incident to the first demand, and pending the establishment of an agreement for deferment, withholdings of amounts otherwise payable to the contractor may be effected to the extent deemed appropriate to the circumstances of each case. See E-608.1.

E-610.1 *Disbursing Officer*. When a disbursing officer has primary responsibility (E-602), withholdings will be effected or not as deemed best by him, during the first 30 days after demand. See E-608.1.

E-610.2 *Contracting Officer*. Whenever a debt is established by a contracting officer (E-602) notice thereof will be given to the appropriate disbursing officer at the same time that demand (E-608) is made for payment. That notice will also inform the disbursing officer as to the wishes of the contracting officer with regard to the withholding or nonwithholding of payments during the ensuing 30 days.

E-610.3 *Deferment Requests — Withholdings*. Pending their action on a request received for deferment of collection (E-611, E-617), the cognizant contracting officer or disbursing officer (E-602), until transfer of the case to the contract financing office (E-611), will arrange for withholding of payments or continuation of payments as deemed appropriate. Upon transfer of a deferment proposal to the contract financing office (E-611), withholding or release or continuation of payments will be accomplished as deemed best by the contract financing office. Ordinarily, upon such transfer, payments will be suspended until the disbursing officer receives guidance from the contract financing office.

E-610.4 *Information*. The contracting officer, the disbursing officer, and the contract financing office must at all times keep each other appropriately informed.

E-610.5 *Withholding After 30 Days*. If payment is not completed within 30 days, and deferment is not requested, withholdings will be effected at once, for principal and interest, to the extent consistent with the rights of assignees under the Assignment of Claims Act of 1940, as amended.

E-610.6 *Rights of Assignees*. In all cases the rights of assignees under the Assignment of Claims Act of 1940, as amended, and under contract provisions pursuant thereto, will be scrupulously respected and withholding of payments under such contracts avoided where contrary to the rights of the assignee.

E-610.7 *Assignments — Provision Against Set-Off — Limitations.* When a contract contains a clause permitting assignment, with provision against reduction or set-off as set out in the last sentence of paragraph (a) of the clause in 7-103.8, and the contractor's claims under the contract have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, and the assignment has not been released by the assignee, the effect to the statute mentioned is ordinarily to prevent application of payments due under the assigned contract to liquidate or reduce indebtedness of the contractor to the Government arising independently of the assigned contract. However, it is sometimes proper to effect collection despite such an assignment, as for example, when there is no loan outstanding in connection with the assignment and the arrangements between the contractor and the assignee are such that no loan is contemplated, or when there is no firm commitment for financing or when the amount of the loan secured and expected to be secured by the assignment pursuant to a firm commitment of the financing institution is less than the amount due and payable on the contract. Diligent effort should be made to ascertain the pertinent facts, from the assignee, the debtor, or otherwise. When appropriate, there should be withholding and application in reduction of the debt, to the extent that the assigned payments are not necessary to cover the loans or advances secured by the assignment, or to be secured incident to projected need for borrowings, and pursuant to a firm commitment of the financing institution. In doubtful cases the question as to the amount, if any, to be withheld should be referred to higher authority, or to the General Accounting Office when appropriate.

E-610.8 *Assignments — Absence of Provision Against Set-Off.* In some cases the contractor's claims have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, but without the contract provision against reduction or setoff set out in paragraph (a) of the clause in 7-103.8, or equivalent provision. In such cases despite the assignment, net amounts due under the assigned contract should be withheld and applied to liquidate indebtedness of the contractor to the Government even though arising independently of the assigned contract, to the extent that such other indebtedness existed at the time written notice of the assignment was received by the Government, even though such debt was not matured so as to be due and payable at the time of such notice.

E-611 Transfer to Contract Financing Office. Transfer of the debt case will be made to the contract financing office (i) upon receipt of a contractor's deferment request or (ii) upon the expiration of 45 days without full collection after the date of initial demand whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department (E-212). Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility (E-602). All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's Department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and if applicable the assignee, date of filing of appeal or of action with the Court of Claims, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. For those debt cases transferred upon expiration of 45 days without full collection action, minimum supporting information and documentation will be provided in accordance with E-603.3.

E-611.1 *Small Amounts*. The transfers required by E-611 above, will not be made for amounts less than $200.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable. (See E-603.)

E-612 Deferment Request Data — Appeal Pending. The information to support a request for deferment of payment when the debt is disputed and timely appeal has been filed pursuant to the "Disputes" clause may be confined to material sufficient to provide understanding of the contractor's financial condition.

E-613 Deferment/Installment Payment Data — No Appeal Pending or Action Filed. The information to support a request for deferment/installment payments when there is no appeal pending or action filed in the Court of Claims pursuant to the Disputes clause should be sufficient to provide understanding of the contractor's financial condition, and should also cover the contractor's contract backlog, projected cash receipts and requirements, the feasibility of immediate payment, and the probable effect of enforcement of full immediate payment on the contractor's operations.

E-614 Deferment Standards.

(a) *Appeals*. Appeals by contractors will not suspend or delay collection action. However, pending the resolution of appeals, deferments will be governed exclusively by the special standards set out in this paragraph E-614. In order to minimize the possibility of overcollections, requested deferments pending the outcome of appeals may be granted by the contract financing office (E-212), when the contractor enters into agreement acceptable to the contract financing office as reasonably assuring diligent prosecution of the appeal and full payment of any amount determined due upon decision of the appeal or upon further negotiations without such decision, with interest on such amount at the rate and for the period mentioned in E-608(2) above. Agreement on interest may include the adjustment provisions authorized by E-618, below. Collateral security, or other provisions to assure payment, shall be consistent with the circumstances of each case. To avoid possible undue hardship to small business concerns or those contractors who are financially weak, deferments pending the outcome of appeals may be granted on such terms and conditions as may be deemed reasonable by the contract financing office, notwithstanding financial weakness of the contractor and notwithstanding its inability to furnish good collateral security. These deferments shall provide for termination of the deferment by the contract financing office upon violation of the agreement or upon failure of the contractor diligently to pursue its appeal.

(b) *Actions*. Actions filed by contractors with the Court of Claims pursuant to the Disputes clause shall not suspend or delay collection. Pending a decision by the Court, deferments shall only be granted if within 30 days after the filing of such action the contractor presents to the appropriate contract finance office (E-212) a good and sufficient bond, or other collateral acceptable to the contract finance office, in the amount of the claim, and approved by such office. Any amount collected by the office in excess of the amount found to be due by the Court shall be refunded to the contractor with interest thereon from the date of collection by the office at the per annum rate established by the Secretary of the Treasury, pursuant to Public Law 92-41. Simple interest shall be calculated throughout the period of indebtedness to reflect each 6-month period change in the rates established by the Secretary.

E-615 Deferment/Installment Payment Standards — No Appeal Pending or Action Filed. When an appeal or action in the Court of Claims is not pending, or has been resolved, the contract financing office (E-212) may make arrangements for deferral/installment payments when the contractor cannot pay at once in full, or when full immediate collection would seriously impair the contractor's ability to continue operations or to perform contracts or subcontracts for the national defense. Such agreements shall include such covenants and security as may be prudent and feasible under the circumstances, shall be limited to the shortest practicable maturities, and shall require the payment of interest at the rate and for the period mentioned in E-608(2) above, subject only to the adjustment specifically authorized by E-618 below.

E-616 Deferment/Installment Approval Authority. There shall be no arrangement or agreement for deferral of payment or no acquiescence to an installment arrangement without prior approval of the contract financing office.

E-616.1 *Inconsistent Contract Provisions*. Except for the deferral arrangements contemplated by this Part 6, no contract may provide and no arrangement may be made to the effect that a claim of the Government under a contract will not become due and payable until there has been mutual agreement on that amount, or until decision on appeal, or in litigation, in matters of dispute.

E-617 Processing of Deferment or Installment Requests - Information - Agreements. When a deferment or installment request is made to the disbursing officer or contracting officer (E-602), the recipient office should make prompt review of the request and any supporting information. If the supporting information appears deficient (E-612, E-613), the contractor should be asked immediately to supply any needed additional relevant information and explanations. For guidance as to financial information and analysis, see E-213 and E-214.

E-617.1 *Proposed Agreement—Review.* In the light of available information, the contractor's letter request or other proposed agreement for deferral or installment should also be reviewed by the recipient office, and the contractor should be informed as to such changes as may be regarded as desirable. Contractor failure to make suggested changes, and related contractor comments, should be noted in the recommendations included with the transfer of the case (E-611) to the contract financing office.

E-617.2 *Minimum Agreement—Appeal Pending.* When appeal is pending, the contractor's proposed deferment agreement should at least include provisions for the following:

(a) Description of the claim;

(b) Date of first demand for payment;

(c) Diligent prosecution of appeal;

(d) Full payment upon decision on appeal, or upon agreement on amount;

(e) Interest charge, in conformity with E-608(2), E-609, and E-618;

(f) Payments to contract financing office (identified);

(g) Submission of periodic financial statements by contractor (as appropriate), submission of such other pertinent reports and information as may be required by the Government, and reasonable access by the Government to the records and property of the contractor;

(h) Termination by Government, and acceleration of maturity upon default by the contractor or institution of insolvency proceedings by or against the contractor.

E-617.3 *Additional Provisions—Appeal Pending.* If desired by the contractor, these deferment proposals may also include provision for partial payment(s) on account and without prejudice, for refund of overpayments, and for interest adjustment as authorized by E-618.

Other terms and conditions for consideration and establishment in these deferral agreements when consistent with the circumstances of the case include provision for collateral security and the other protective provisions mentioned in E-511.6 and outlined in E-414.2.

E-617.4 *Installment Agreement — No Appeal Pending.* When no appeal is pending or no action is filed with the Court of Claims, the installment agreement, conforming to the standards of E-615, should include:

(a) The provisions outlined in E-617.2 (except E-617.2(d));

(b) A definite schedule or plan for payments, with unrestricted rights of prepayment;

(c) Additional security and protective covenants as may be prudent and feasible (E-617.3); and

(d) In furtherance of attainment of the shortest practicable maturities, whenever feasible (i) provision for periodic review of the contractor's financial condition by the Government, and discretionary right of the Government to require prepayments deemed within the improved ability of the contractor to pay, and (ii) provision requiring stated or measurable prepayments on the occurrence of specified events or contingencies involving improvement in the contractor's ability to pay.

E-617.5 *Final Action.* Incident to its review and action of a deferment or installation proposal, the contract financing office (E-611) may request additional information, as well as other assistance needed from the transmitting office (E-611). Such requested information and assistance will be furnished promptly so that final action on the proposed deferment or installment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by it, the contract financing office may deal directly with the contractor concerning collection or deferment of the debt.

E-618 Adjustment of Interest. When the contract under which the debt was established does not provide for interest and for adjustment of interest, and payment is not made within 30 days after demand conforming to E-608 or E-608.2, interest accrued before the making of a deferment agreement shall not be released or reduced. Deferment agreements may provide for adjustments for overcollections, to the effect that in addition to refund and release of overcollections, the contractor shall receive, from amounts collected or withheld for the amount of indebtedness and accrued interest thereon, a sum computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, on the amount of overcollection and excess withholding for the approximate periods thereof as deemed fair and reasonable by the contract financing office (E-212). The total refund and release to the contractor shall in no event exceed the total amount that has been collected or that has been withheld for the purpose of collection of the asserted indebtedness.

E-618.1 *Guidelines for Overcollection Adjustments.* In determining the approximate day of the beginning of a period of overcollection or excess withholding, as authorized pursuant to E-618, the date of receipt of a check by the contract financing office, or by the appropriate disbursing office, if earlier, will ordinarily be regarded as the day on which the amount of that check was collected or withheld for the purpose of collection. For tax credits, see E-604.1.

The amount of overcollections and excess withholding, if any, would be the amount by which the total collections and withholdings for a particular asserted indebtedness have exceeded the sum of (1) the principal amount of the contractor's indebtedness to the Government, as finally determined in the particular case, and (2) interest thereon, computed from the date of the first demand or such earlier date as may be applicable.

In cases to which the first sentence of E-618 applies, the maximum limit on refund and release, specified by the last sentence of E-618, will be reduced by the amount of interest mentioned in the first sentence of E-618.

Whenever the amount of the debt may be subject to reduction in connection with an appeal, the deferment agreement will provide for the adjustment authorized by E-618.

E-618.2 *Non-Existent Debt*. Interest is a charge or compensation for the use or retention of money. Hence, whenever the principal amount of a particular asserted indebtedness is reduced, as finally determined in a particular case, interest is chargeable only on the principal amount of the debt as finally determined. To the extent that principal debt is eliminated, interest of course is also eliminated.

E-619 Contract Interest Charge. When the contract under which the debt was established provides for interest and for adjustment of interest, those provisions of course will be followed. When a contract provides for interest and for adjustment of interest in accordance with applicable regulations (7-104.39), interest will be charged on the amount of the indebtedness at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, from the date of the first demand (or any earlier date established pursuant to the contract), and adjustments will be made in the same way as in herein authorized by E-618, above, for deferment agreements. In addition to those adjustments, and without duplication, the interest accruing pursuant to a provision for interest in a contract (other than a deferment agreement) shall be reduced as herein provided. That reduction of interest charge, not exceeding accrued interest (and without duplication of adjustments on account of overcollections or overwithholdings) shall be an amount derived by application of the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, in favor of the contractor on the amounts and for the periods for which the interested contract financing office (E-212) considers that the Government has unduly delayed the making of payments earned and properly billed and payable to the contractor on the same contract. Such reduction of interest charge can never exceed the total interest on the debt.

E-619.1 *Contract Interest Charge Standards*. Interest will be computed for the number of days involved, on the basis of a 365- or 366-day year as the case may be. Except as provided below, credits resulting from deductions from amounts otherwise payable to the contractor should be made as of the date of issue of the checks for such payments. Credits resulting from cash payments to the Government by the contractor should be made as of the date the funds or checks therefor are received by the appropriate disbursing officer, or by the contract financing office if the payment is made directly to that office. If the amount has been withheld or retained on a contract in conformity to a withholding or retention provision of that contract, and the amount or a part thereof is thereafter transferred for application in reduction of an interest bearing debt pursuant to this Part 6, credit toward reduction of the debt should be allowed as of the approximate time when such withheld or retained amount would have become payable to the contractor. If, for example, the contract on which amounts have been retained provides for release of retainages upon satisfactory completion of the work under the contract, credit for the amount of such retainage actually transferred for application in reduction of a debt should be allowed as of the date when the contract was satisfactorily completed. For timing of application of amount of tax credit, see E-604.1.

E-619.2 *Contract Interest Reduction Standards.* In arriving at an amount by which interest accruing on indebtedness under a contract should be reduced, as provided by E-619, the contract financing office should endeavor to attain a fair and equitable result, in the light of the circumstances of each case. In so doing, it should take into account the instances, if any, in which it is considered by that office that there has been undue delay by the Government in the making of payments earned by the contractor and payable to the contractor on the same contract, after proper billing by the contractor. Except to the extent that a payment delay may have resulted wholly or partly from errors or omissions on the part of the contractor, such delays should generally be considered as being undue delays, that is, delays that are unreasonable, unwarranted or excessive, if the time between the proper billing and the making of payment exceeded 30 days, and also exceeded the number of days ordinarily required for the processing of bills and making of payments in the ordinary course of business in substantially similar circumstances.

The contract financing office is not expected to undertake to review contract payment histories or to look into the circumstances that may lead to these interest reductions, except to such extent as may be appropriate in connection with a contractor's request for an interest reduction. Such requests by contractors should identify the payment delays asserted by the contractor and describe the known facts with sufficient particularity to enable the contract financing office readily to verify the extent and causes of the delay. Contractors will be expected to comply with reasonable requests of a contract financing office for additional information or documentation. In the absence of contractor request for interest reduction, it may be assumed that there were no undue payment delays by the Government that would warrant interest reduction adjustment pursuant to E-619. If full payment has been made by the contractor, or if full collection has been accomplished, before the contractor has made a request for interest reduction pursuant to E-619, it is expected that the contract financing office ordinarily will deny such request thereafter made unless presented within such time after full collection or payment as is deemed reasonable by the contract financing office. The interest reduction pursuant to E-619 shall not exceed the amount determined by the contract financing office.

E-620 Contract Clause—Interest. Except as provided in E-621 below, all contracts for procurement, or for sale or use of Government property or services, shall include the clause in 7-104.39. The interest rates established by the Secretary of the Treasury will be published in the Federal Register every six months. The current rate may also be obtained from the Departmental Contract Finance Office representative.

E–621 Exceptions to Interest Clause Requirement. Contract provision for interest need not be included in (1) small purchases (see Section III, Part 6); (2) purchases described in 16–303, 16–501, 16–504, or in Section V; (3) purchases under indefinite delivery type contracts existing before the effective date of this Part 6; (4) amendments of contracts existing before the effective date of this Part 6; or (5) contracts with agencies of the United States Government, foreign governments or agencies thereof, State or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions. Further exceptions may be established by the Contract Finance Committee (E–107.3), with the approval of the Assistant Secretary of Defense (Installations and Logistics) or his representative.

E–621.1 *Further Exceptions.* The following further exceptions have been established pursuant to the second sentence of E–621:

(i) contracts for instructions of military personnel, or ROTC personnel, at civilian schools, colleges, and universities;

(ii) basic agreements with telephone companies, under which communications services and facilities will be ordered, and purchases under such agreements; and

(iii) transportation contracts with common carriers for common carrier services, *e.g.*, common carrier transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms (1–102).

E–622 Exemptions from Administrative Interest Charge. Contractors and contracts mentioned in E–621 (5) above, and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this Part 6 when so agreed by the Contract Finance Committee (E–107.3) with the approval of the Assistant Secretary of Defense (Installations and Logistics) or his representative.

E–623 Responsibilities. The contract financing office (E–212) of each military department, will take appropriate actions to effect collection of debts referred to it, including administration of deferment agreements, to cause debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-up List," to remove names from the "Hold-up List," to determine administrative uncollectibility, and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Department, no arrangement for installment or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this Part 6 those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

Responsibility for assuring effective administration in accordance with this Part 6 shall be in the Assistant Secretary of Defense (Installations and Logistics). Responsibility for effective administration under this Part 6 in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function. The Contract Finance Committee (E–107.3) shall advise and assist the Assistant Secretary of Defense (Installations and Logistics) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this Appendix E and will develop and promulgate herein supplemental instructions on this subject.

Reports will be made by each Department in connection with the subject matter of this Part 6 at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Installations and Logistics).

E-624 Delays or Failures of Notice or Demand. It is expected that (1) demands (E-608, E-608.2, E-609, and paragraph (ii) of the clause in 7-104.39) and notices (paragraph (iv) of the clause in 7-104.39) will bear a date closely approximating the date of transmittal; (2) such demands and notices, and the supplemental agreements mentioned in paragraph (iii) of the clause in 7-104.39, will be delivered in due course to contractors. It could happen occasionally (1) that there is undue delay after the stated date of a demand or notice, before its dispatch, or (2) that there is undue delay in the mails or other selected means of communication after transmittal of a demand, notice or supplemental agreement, or (3) that a demand, notice, or supplemental agreement is not in fact received by the contractor, and that the non-receipt is not the result of any act or omission on the part of the contractor. In such cases, the due date of the debt and the starting time for accrual of interest thereon will be extended to such time as is fair and reasonable under the particular circumstances. For example, if there is substantial delay between the date of a demand or notice, and the actual date of its dispatch or transmittal, the actual date of dispatch or transmittal would apply instead of the date stated on the demand or notice. Such delay should not be allowed to happen. Also, for example, (1) if there is unusual delay in the mails or other selected form of communication, after dispatch or transmittal of a demand, notice, or supplemental agreement, the date of receipt by the contractor would apply instead of the earlier date otherwise applicable, and (2) if the demand, notice, or supplemental agreement, as the case may be, is not received by the contractor, the date of transmittal of a second demand, notice, or supplemental agreement would apply instead of the earlier date otherwise applicable.

E-625 Compromise. The Federal Claims Collections Act of 1966 (P.L. 89-508, 80 Stat. 308), July 19, 1966, authorizes the compromise of certain claims that do not exceed $20,000. This statute also authorizes termination or suspension of collection action on such claims. Actions under this statute must conform to standards prescribed jointly by the Attorney General of the United States and the Comptroller General of the United States. These controlling standards have been established by joint regulations published in the Federal Register of October 15, 1966, pages 13381-13385, Title 4, Chapter 11, entitled, "Joint Regulations Prescribing Standards for Administrative Collection, Compromise, Termination of Agency Collection Action, and Referral to General Accounting Office, and to Department of Justice for Litigation, of Civil Claims by Government for Money or Property."

E-625.1 *Delegation*. Department of Defense Authority under the above statute and joint regulations (E-625) has been delegated to the Departments (E-002). Within each Department, for those debts covered by this Part (E-600) authority to act in conformity to the cited statute and joint regulations has been delegated to the contract financing office (E-212).

E-626 Bankruptcy Reporting. For those debts covered by this Part 6 (E-600), claims in bankruptcy or insolvency, or in proceedings for reorganization or rearrangement will be furnished to the Department of Justice. These claims are (i) those which have been transferred to a contract financing office (E-611), (ii) those on their way to a contract financing office at inception of bankruptcy or insolvency proceedings, (iii) those pending and not forwarded to a contract financing office at inception of bankruptcy or insolvency proceedings, and (iv) those which are the consequence of bankruptcy or insolvency proceedings. Information on a bankruptcy, insolvency, reorganization or rearrangement will be provided as soon as possible by the office of origin of a debt to that office within a Department designated to receive such information. Proof of claim, with pertinent supporting data and documentation shall be furnished to the Department of Justice by the contract financing office (E-212) or by such other office as may be designated within a Department. All claims arising under the same contract will be filed by the procuring department which awarded the contract. Information, reports, and proof of claim under this paragraph are not expected on debts of less than $400.

ANNEX 1

Form of September 27, 1950
(As amended to October 1, 1953)

V-LOAN GUARANTEE AGREEMENT

No....................

The ....(*Guaranteeing Agency*) (herein called "Guarantor"), acting through the Federal Reserve Bank of .... as fiscal agent of the United States, pursuant to the Defense Production Act of 1950, as amended, and Executive Order No. 10480, and the Financing Institution, as hereinafter defined, hereby agree each with the other as follows:

Section 1. Definitions

As used in this agreement—

(A) The words "Financing Institution" shall mean

....

(B) The word "Borrower" shall mean ....
.... (*Name*) ....
of ....(*Address*) ....
the said Borrower being engaged or about to engage in the performance of a contract or other operation deemed by the guarantor to be necessary to expedite production and deliveries or services under a Government contract for the procurement of materials or the performance of services for the national defense.

(C) The words "the loan" shall mean a financing arrangement between the Financing Institution and the Borrower, the terms and conditions of which are briefly described as follows:

(The description of the loan shall include the following items in the following order: Type of loan (straight loan or revolving credit), principal amount (maximum amount of credit in the case of a credit), interest rate, and maturity (latest maturity in the case of a credit). Provisions as to collateral and other protective provisions prescribed by the Guarantor should also be described here, or, if preferred, by referring to an annexed loan agreement or other similar instrument; but the terms and the provisions of such agreement or instrument should not be made a part of or incorporated in the guarantee agreement).

(D) The word "obligation" shall mean the instrument or instruments evidencing the Borrower's indebtedness under the loan and any renewals or extensions thereof.

(E) The term "guaranteed percentage" shall mean (1)..............percent, or (2) the percentage specified above as increased by an adjustment thereof under section 8 or section 9 of this agreement.

(F) The term "unguaranteed percentage" shall mean the difference between 100 percent and the guaranteed percentage.

(G) The words "collateral for the loan" shall mean all collateral or security specified in the description of the loan under paragraph (C) of this section or taken or accepted in substitution for such specified collateral or security, and any collateral or security hereafter taken or accepted for the specific protection of the loan.

(H) The words "interest in the obligation" shall mean the amount of the obligation owned by the Guarantor or by the Financing Institution, as the case may be.

(I) The word "Holder" shall mean the party to this agreement which has possession of the obligation and shall be determined in accordance with the provisions of sections 4 and 10 of this agreement.

(J) The words "Reserve Bank" shall mean the Federal Reserve Bank of .... as fiscal agent of the United States acting on behalf of the Guarantor in accordance with the provisions of the Defense Production Act of 1950, as amended, and Executive Order No. 10480 of August 14, 1953, and applicable provisions of law.

(K) A "defense production contract" shall mean any contract made or order accepted by the Borrower for the sale of furnishing by the Borrower of materials, equipment, supplies, facilities, or services or for the processing or treatment by the Borrower of materials, which (1) constitutes (a) a prime contract with any guaranteeing agency designated by the Defense production Act of 1950, as amended, or by Executive Order issued thereunder or with the Energy Research and Development Administration or any other Government department or agency directly or indirectly and substantially concerned with the national defense as the term "national defense" is defined in section 702(d) of the Defense Production Act of 1950, as amended or (b) a contract made or order accepted by the Borrower to aid directly or indirectly in the performance of any such prime contract, and (2) is related to the procurement of materials or the performance of services for the national defense.

(A) All losses of principal and interest on the loan, and all expenses as defined in paragraph (D) of this section, shall be shared ratably by the Guarantor and the Financing Institution in accordance with the guaranteed percentage and the unguaranteed percentage, respectively, as such losses, expenses and percentages exist on the date of settlement between the Financing Institution and the Guarantor, regardless of whether or not any purchase has been made under this agreement.

(B) The date of settlement between the Financing Institution and the Guarantor shall be such date as may be agreed upon by the parties or, if no such date is agreed upon, the thirtieth day after the date on which either party to this agreement receives from the other party a written request for such settlement, but no such request will be made by the Guarantor prior to maturity nor prior to the time when the amount of the ultimate losses and expenses appears to be determinable with reasonable certainty.

(C) In determining losses under paragraph (A) of this section, all amounts which, on the date of settlement, have not been paid shall be regarded as losses even though they may appear to be recoverable thereafter. All net recoveries realized after the date of settlement, from whatever source realized, shall be shared ratably by the Guarantor and the Financing Institution on the basis prescribed in this section.

(D) For the purposes of this section, expenses shall mean all reasonable out-of-pocket expenses (including reasonable counsel fees incurred by the Financing Institution of the Reserve Bank prior to but not after any purchase under this agreement) which relate to the enforcement of the loan or the preservation of the collateral and which are incurred during the period of any default in the payment of principal or interest, and which have not been recovered from the Borrower.

(E) Within the meaning of paragraphs (A) and (C) of this section a loss on the loan shall include any amounts which may have been received by the Financing Institution and applied by it to reduction of the loan but which are subsequently recovered from the Financing Institution, either before or after the date of settlement, by the United States or by any person lawfully entitled to such recovery.

Section 3. Agreement to Purchase

(A) Upon written demand or demands made by the Financing Institution on the Reserve Bank at any time prior to the date of settlement between the Guarantor and the Financing Institution, the Guarantor will purchase from the Financing Institution, on the tenth (10th) day after the receipt by the Reserve Bank of such a demand, the guaranteed percentage of the unpaid principal amount of the loan, less any amounts which have been previously purchased by the Guarantor under any provision of this agreement and have not been repaid. Such purchases will be made by the Guarantor from time to time either as a whole or in such portions as may be demanded in writing as above specified.

(B) Any purchase by the Guarantor pursuant to any provision of this agreement shall be made at the Reserve Bank, and the amount that the Guarantor shall pay shall be the face amount of the portion of the unpaid principal amount of the obligation so purchased, as of the date of the demand, plus all unpaid accrued interest on such portion, with appropriate adjustment for guarantee fees, computed as of the date of purchase. Such purchase shall be made for cash, except that if the Guarantor owns an interest in any obligation which has been issued under a revolving credit arrangement and if, at or before the maturity of such obligation, the Reserve Bank receives written demand from the Financing Institution for the purchase of the same or a lesser amount of a new obligation to be issued in place of such maturing obligation, payment for the portion of the new obligation purchased pursuant to such demand will be made by the Guarantor by surrendering, at or before maturity, its interest in the maturing obligation, in the amount of the demand by the Financing Institution and without regard to the ten-day period specified in paragraph (A) of this section.

Section 4. Administration of Loan and Possession of Obligation and Collateral

(A) Prior to any purchase under this agreement, the Financing Institution shall administer the loan and shall hold the obligation and the collateral for the loan. Whenever the Guarantor becomes the owner of any part of the loan under this agreement, the Financing Institution shall continue to administer the loan and to hold said obligation and collateral, and shall forthwith deliver to the Reserve Bank a certificate reciting that the Financing Institution holds said obligation and collateral for the account of the Guarantor to the extent of the Guarantor's interest therein. In any such case, however, upon written demand by the Reserve Bank, the Financing Institution shall forthwith endorse the obligation to the Reserve Bank without recourse or warranty and shall assign the collateral (or its interest therein if such collateral cannot be assigned because it is held for the account of more than one Financing Institution) to the Reserve Bank without recourse or warranty, except as to the genuineness of the signature of the Borrower to any instrument, and shall forthwith deliver to the Reserve Bank possession of the obligation and of the collateral (or an assignment of its interest therein as above provided). Thereupon the Reserve Bank shall issue to the Financing Institution a certificate reciting that the Reserve Bank holds said obligation and collateral for the account of the Financing Institution to the extent of the Financing Institution's interest therein. Thereafter the Guarantor, through the agency of the Reserve Bank shall administer the loan and shall hold said obligation and collateral for the account of the Guarantor and the Financing Institution as their interests in the obligation may appear. The Guarantor and the Financing Institution shall at all times during the existence of this agreement have the right to examine and inspect said obligation and collateral.

(B) Whenever the Guarantor becomes the Holder of the obligation, the Financing Institution will at any time at the written request of the Guarantor furnish to the Guarantor such instruments as may be reasonably necessary or appropriate to enable the Guarantor to administer the loan and enforce the obligation and collateral for the loan in accordance with the terms of the loan.

(C) Nothing contained in this or any other section of this agreement shall be construed to prevent the Financing Institution from offering the obligation as collateral for advances by a Federal Reserve Bank, if such obligation is otherwise eligible and acceptable as collateral for such advances.

Section 5. Ratable Application of Collections

All amounts at any time paid or credited on the obligation, from whatever source realized, shall be applied ratably for the benefit of the Financing Institution and the Guarantor according to their respective interests in the obligation. All amounts so paid or credited upon the obligation after the date of a demand by the Financing Institution or the Guarantor, as the case may be, for a purchase under this agreement and prior to the date of such purchase shall be applied as above provided according to such respective interests of the Guarantor and the Financing Institution as such interests exist immediately after such purchase. The Holder of the obligation and collateral shall receive all payments from the Borrower in connection with the obligation and shall promptly remit to the other party to this agreement such other party's share thereof.

Section 6. Application of Proceeds of Collateral and Other Assets

(A) There shall first be applied to the full payment of the loan before they are applied to the payment of other indebtedness of the Borrower to the Financing Institution: (1) All proceeds of any collateral for the loan; and (2) all proceeds of accounts receivable and of inventories (including finished products and work in process) arising under the Borrower's defense production contracts, to the extent that such accounts receivable or inventories are taken or appropriated by the Financing Institution, except defense production contracts under which claims may heretofore have been, or may with the written consent of the Guarantor hereafter be, specifically assigned to the Financing Institution as security solely for other indebtedness of the Borrower to the Financing Institution. If any funds on deposit, or other amounts payable to the Borrower by the Financing Institution, or other assets of the Borrower (except those described in clause (2) above) which are not specifically pledged as security for any indebtedness shall be taken or appropriated by the Financing Institution, the Financing Institution shall apply such funds and the proceeds of such other assets pro rata against the then unpaid balance of the loan and the then unpaid balance of such other indebtedness of the Borrower to the Financing Institution. Funds on deposit, amounts payable, and other assets shall not be considered to be specifically pledged for any indebtedness, within the meaning of this section, if the right of the Financing Institution to apply the proceeds thereof to such indebtedness exists only by virtue of the right of banker's lien or setoff or only by virtue of a "spreader," "overlap" or "cross-lien" provision in any note or loan agreement.

(B) There shall first be applied by the Guarantor to the full payment of the loan, before they are applied to the payment of other indebtedness of the Borrower to the Guarantor, all proceeds obtained by the Guarantor from: (1) accounts receivable and inventories (including finished products and work in process) arising under the Borrower's defense production contracts, and (2) any right of priority accruing to the Guarantor on account of any claim by the Guarantor against the Borrower, and (3) any right of setoff in respect of amounts due to the Borrower on any defense production contract (except a right of setoff arising out of a claim under the same contract); except that the foregoing shall not apply to any pledge, lien, or other security taken by the Guarantor as collateral for an advance payment or loan by the Guarantor to the Borrower.

Section 7. Actions as to Obligation or Collateral

The Holder shall not, without the prior written consent of the other party to this agreement, (a) make or consent to any material alteration in the terms of the loan or collateral for the loan; (b) make or consent to any release, sale, transfer, further pledge, subordination or substitution of any of said collateral for the loan; or (c) give any consent or waiver under any provision of the loan. However, the consent of the other party shall not be necessary with respect to any release or substitution of such collateral required or authorized by the terms of the loan as such terms are described in paragraph (C) of section 1 of this agreement or in any instrument referred to therein, and no notice of any such action need be given to the other party. The Holder, unless prior objection thereto shall have been made in writing by the other party, may extend the term of the loan, but, without the prior written consent of the other party, not more than once and for not more than sixty (60) days; but notice of any such extension shall be thereafter promptly transmitted to the other party. The taking of additional collateral or security shall not be considered a material alteration in the terms of the loan or collateral for the loan.

Section 8. Refusal of Guarantor to Consent to Accelerated Maturity

The Financing Institution, if it be the Holder, shall not exercise any option to accelerate the maturity of the obligation without the prior written consent of the Guarantor. If such an option exists (whether or not conditioned upon the giving of notice to the Borrower) on the part of the Holder to accelerate the maturity of the obligation and (a) the Guarantor fails to give its written consent, within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution to do so, to the acceleration of the maturity of the obligation or (b) if the Guarantor be the Holder and does not, within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution that the Guarantor do so, initiate appropriate action to accelerate the maturity of the obligation, the guaranteed percentage shall thereupon, in either event, effective ten (10) days after the receipt of such request, be 100 percent. The Guarantor may, after giving notice to the Financing Institution, exercise any option to accelerate the maturity of the obligation without obtaining the consent of the Financing Institution, and the loan shall so provide.

Section 9. Failure to Sue or Consent to Suit

The Financing Institution, if it be the Holder, shall not, without the prior written consent of the Guarantor, bring suit to enforce payment of the obligation or any installment thereof, or directly or indirectly institute bankruptcy, receivership or insolvency proceedings against the Borrower, or foreclose on or otherwise enforce realization of the collateral by exercise of a power of sale or by legal proceedings against the Borrower; but the Guarantor, if it be the Holder, after giving notice to the Financing Institution, may take any action specified in this sentence without obtaining the consent of the Financing Institution. If at any time all or any portion of the principal or interest of said obligation is due and unpaid and (a), while the Financing Institution is the Holder, the Guarantor fails to give its written consent within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution to do so, to the taking of any action specified in the preceding sentence or (b) if the Guarantor be the Holder and does not, within thirty (30) days after the Reserve Bank shall have received a written request from the Financing Institution that the Guarantor take action as aforesaid, take the action requested or one of the other steps specified in the preceding sentence, the guaranteed percentage shall thereupon in either event, effective ten (10) days or thirty (30) days, as the case may be, after the receipt of such request, be 100 percent.

Section 10. Voluntary Purchase by Guarantor

Whenever the Guarantor elects, it may purchase, and the Financing Institution shall sell to it, the guaranteed percentage of the unpaid principal amount of the obligation, less any amounts which have been previously purchased by the Guarantor under any provision of this agreement and have not been repaid; but no such purchase shall be made except ninety (90) days or more after the original advance on the loan or shall become effective until ten (10) days (or such lesser period as the Guarantor may specify) after the Guarantor shall have sent to the Financing Institution a demand for such purchase by telegram or registered mail. In the event of any purchase under this section, the Guarantor shall, at the request of the Financing Institution, or may, at its own option, immediately become the Holder in the manner provided in section 4 without the written demand therein specified.

Section 11. Reports as to Borrower's Condition

The Holder shall promptly notify the other party of any default in the payment of principal, or of any default which shall continue for ten (10) days in the payment of interest, on the part of the Borrower. As long as the Financing Institution has any interest in the loan, each party shall notify the other party of any other default on the part of the Borrower in connection with the loan, or of any unfavorable change in the financial condition or in the business of the Borrower or in the collateral for the loan, of which such party has acquired actual knowledge in connection with the administration of said loan and which in its opinion at the time is material. The Financing Institution shall, upon the request of the Reserve Bank, furnish to the Reserve Bank any other information relating to the financial condition of the Borrower and the progress of the loan which it has acquired in connection with the administration of said loan.

Section 12. Fees Payable to Guarantor

The Financing Institution shall pay to the Reserve Bank at the end of each monthly or quarterly period, as fixed by the Reserve Bank, (a) an amount equal to .... percent of any interest payable by the Borrower on the average daily amounts of that part of the unpaid principal of the obligation which the Guarantor was obligated during such period to purchase upon demand of the

Financing Institution, and also (b) an amount equal to the same percent of the "guaranteed percentage" of any commitment fee payable by the Borrower to the Financing Institution during such period.

Section 13. Effect of Violation of Agreement

(A) If the Financing Institution shall violate, or fail to comply with, any of the terms of this agreement or any of the terms or conditions of the loan or shall through gross negligence make a material misrepresentation of fact in the application therefor, or in anything constituting a part of the application, it shall become liable to the Guarantor in an amount equal to the damages sustained by the latter by virtue of such violation, failure to comply, or misrepresentation; but the Guarantor shall not be relieved by such violation, failure to comply, or misrepresentation from any of its obligations to the Financing Institution under the terms of this agreement.

(B) In the absence of gross negligence on the part of the Financing Institution:

- (1) No invalidity or ineffectiveness of any collateral or of any assignment thereof accepted by the Financing Institution; and
- (2) No action or omission to act on the part of the Financing Institution in reliance on a statement or certificate signed by an appropriate officer or member of the Borrower with respect to the financial condition, business or operations of the Borrower or the purpose for which funds of the Borrower have been or are intended to be used;

shall constitute a violation of, or failure to comply with, any of the terms of this agreement or any of the terms or conditions of the loan on the part of the Financing Institution. No invalidity of any provision of the loan agreement (or other similar instrument), if any, referred to herein, arising from statute or decision of any court, shall in any way relieve the Guarantor hereunder.

Section 14. Interpretation of Agreement

(A) This agreement constitutes the entire contract between the Guarantor and the Financing Institution, and no claim of waiver, modification, consent, or acquiescence with respect to any of the provisions of this agreement shall be made against either party except on the basis of a letter or other written instrument executed by or on behalf of such party.

(B) No provision of the loan agreement (or other similar instrument), if any, shall increase, limit or vary the rights or obligations of the Financing Institution, the Guarantor or the Borrower under this agreement.

Section 15. Prohibition Against Assignment

This agreement shall not be assignable by either party, but this shall not prevent the Financing Institution from granting to other financing institutions participations in the obligation, provided, however, that the Guarantor shall recognize and deal only with the Financing Institution.

Section 16. Officials Not to Benefit

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on their behalf by their duly authorized agents this .... day of ...., 196—

(Guarantor) ....

(SEAL OF FINANCING INSTITUTION)

By Federal Reserve Bank of.........

As Fiscal Agent of

The United States

By.......... .....*(Name)*

.......................*(Title)*

Attest: ....*(Name)* ....*(Title)*

................*(Financing Institutuion)*

By...........*(Name)*

..........................*(Title)*

(End of Agreement)

APPENDIX F

ILLUSTRATIONS OF STANDARD AND DEPARTMENT OF DEFENSE FORMS

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BEST DOCUMENT AVAILABLE

APPENDIX F

ILLUSTRATIONS OF STANDARD AND DEPARTMENT OF DEFENSE FORMS REFERENCED IN ASPR

F-000 Scope. This Appendix contains illustrations of Standard and Department of Defense forms referenced in this Regulation.

Part 1—Standard Forms

F-100 Scope of Part. Standard Forms referenced in this Regulation are illustrated in this Part in numerical order to provide a ready source of reference. The subparagraph numbers correspond with the Standard Form numbers—thus, Standard Form 18 appears as F-100.18.

APPENDIX G

AVOIDANCE OF ORGANIZATIONAL CONFLICTS OF INTEREST

I. PREAMBLE

The Report to the President on Government Contracting for Research and Development (generally known as the Bell Report) states that "today about 80% of Federal expenditures for research and development are made through non-Federal institutions" and that "there is no doubt that the Government must continue to rely on the private sector for the major share of the scientific and technical work which it requires."

In such contracting, it is the policy of the Department of Defense that the contractor should be given the maximum responsibility and authority for the performance of assigned tasks, and these tasks be of such a nature, even when they are part of a major system, as to be self-contained from a management point of view. The Report further states that there are certain essential management functions in the research and development area that must be retained within Government. For instance, the integration and coordination of the separate parts of a large weapons system contract involving several major contractors would, as a general rule, be handled by Government agencies. To achieve this integration and coordination, however, special arrangements are sometimes needed such as are made with nonprofit organizations and industrial organizations. In this case, the Government must be able to establish rules for its relationships with the nonprofit or industrial organizations which may be stricter than those normally employed with prime contractors. All prospective contractors will be advised of the applicability of the rules by a notice in solicitations and by a clause in resulting contracts.

Where the Department of Defense does contract for research and development work, as it must for the bulk of that work, its choice of a contractor should be based primarily upon two considerations:

"(1) Getting the job done effectively and efficiently, with due regard to the long-term strength of the Nation's scientific and technical resources, and

"(2) Avoiding assignments of work which would create inherent conflicts of interest."

The Report points out that while there are advantages and disadvantages to the various types of organizations within the private sector (universities, private nonprofit organizations and industrial corporations), these types of organizations should not "be given areas of monopoly on different kinds of work," or be permitted to develop a privileged relationship to the Department of Defense.

In connection with the second criterion, the Report proposes that each department develop a "Code of Conduct" for organizations in the research and development field. These rules have been developed in accordance with that instruction.

It should be borne in mind that the pragmatic test for the selection of a contractor for a particular research and development contract covers both profit and nonprofit organizations, including those created largely or wholly with Government funds. But the rules do not deal with the criteria for the creation of additional Government-sponsored nonprofit organizations in this category. It is the policy of the Department of Defense that such organizations are created only under extraordinary circumstances, when private resources are not available to accomplish a necessary objective beyond the scope of in-house capabilities. Their termination is governed by the organic statutes of the individual organizations. These rules should make it even less likely that any additional Government-financed nonprofit organizations need be created. While these organizations are in existence they will be treated by the Department on arms length basis, as the rules prescribe.

II. RULES

The following rules state general prohibitions which are then explained and illustrated by specific examples. There will undoubtedly occur cases which are not resolved by these rules. As the Bell Report said, "[Conflict of Interest] arises in several forms—not all of which are by any means yet fully understood." In order to assist in deciding what, if any, prohibitions should be applied in such instances, the two basic principles of this code—(1) preventing conflicting roles which might bias a contractor's judgment, and (2) preventing unfair competitive advantage—should be paramount. The following rules and examples are not all inclusive but merely attempt to achieve these two goals in a variety of situations. The ultimate test should always be: Is the contractor placed in a position where his judgment may be biased, or where he has an unfair competitive advantage? If so, corrective action must be taken in accordance with the rules below.

As used in these rules, "contractor" means the person under contract to the Department of Defense to perform the work described in each rule, and its affiliates; "system" means system, subsystem, project or item. The term "systems engineering" includes a combination of substantially all the following activities: determination of specifications, identification and solutions of interfaces between parts of the system, development of test requirements or plans and evaluation of test data, and supervision of design work. The term "technical direction" includes a combination of substantially all the following activities: preparation of work statements for contractors, determination of parameters, direction of contractors' operations, and resolution of technical controversies.

1. If a contractor agrees to provide systems engineering and technical direction (SE/TD) for a system, without at the same time assuming over-all contractual responsibility for: (a) development, or (b) integration, assembly and checkout (IAC), or (c) production of the system, then that contractor shall not later be allowed to supply the system or any major components thereof, or to be a subcontractor or consultant to a supplier of the system or any major components thereof.

Explanation: The SE/TD contractor occupies a highly influential and responsible position as an agent of the Department of Defense both in determining basic concepts of a system and in supervising their execution by other contractors. To assure the objectivity of its services and hence a more soundly planned system, the SE/TD contractor must not be in a position to make decisions which could favor its own products. Furthermore, it would be inconsistent with the managerial responsibility of an SE/TD contractor for it to be concurrently one of the component suppliers.

Example A: Company A agrees to provide SE/TD for the Navy on the power plant for a group of submarines (i.e., turbine, drive shafts, props, etc.). Company A shall not be allowed to supply any power plant components. Company A can, however, supply components of the submarine unrelated to the power plant (e.g., fire control, navigation, etc.). In this example, the system is the power plant, not the submarine, and the ban on the supply of components is coterminous with the system only.

Example B: Company A is the SE/TD contractor for system X. After some progress, but prior to completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the SE/TD contractor for system Y. Company A may bid to produce system Y or its components.

2. If a contractor agrees to prepare and furnish complete specifications covering nondevelopmental items to be used in competitive procurement, that contractor shall not be allowed to furnish such items, either as a prime or subcontractor, for a reasonable period of time including, at least, the initial procurement. This rule shall not apply to:

a. Contractors who furnish at Government request specifications or data with respect to the product they furnished, even though the specifications or data may have been paid for separately or in the price of the product.

b. Situations where one or more contractors acting as industry representatives assist Department of Defense agencies in preparing, refining or coordinating specifications, regardless of source, which assistance is supervised and controlled by Government representatives.

c. Contracts for developmental or prototype items.

Explanation: If a single contractor is engaged by the Government to draft complete specifications for nondevelopmental equipment, he should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation where he could draft specifications which would favor his own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of its specifications and can avoid allegations of favoritism in the award of production contracts.

In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the Department of Defense. In many instances the Government may have financed such development. Thus, the development contractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

AVOIDANCE OF ORGANIZATIONAL CONFLICTS OF INTEREST

In instances of cooperation between industry and Department of Defense agencies to prepare, refine or coordinate specifications, there is continuous participation and supervision by Government representatives and, usually, more than one contractor concerned. In these circumstances Government supervision prevents the establishment of specifications oriented to favor a given contractor's products or capabilities.

Example A: Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

Example B: Company A designs or develops a new electronic equipment and, as a result of the design or development, prepares specifications. Company A may supply the electronics equipment.

Example C: XYZ Tool Company and/or KLM Machinery Company representing the American Tool Institute work under the supervision and control of Government representatives to refine specifications or to clarify the requirements of a specific procurement. These companies may supply the item.

3. If a single contractor, other than a company which has participated in the development or design of a system, agrees to assist the Department of Defense or a contractor of the Department of Defense in the preparation of a statement of work, or agrees to provide material leading directly, predictably, and without delay to a statement of work, to be used in the competitive procurement of a system or services, that contractor shall not be allowed to supply the services, or the system or major components thereof, unless he is the sole source. The content of a statement of work shall not be considered predictable if more than one contractor is involved in the preparation of material leading to it.

Explanation: The various services related to a statement of work to be used in a competitive procurement should normally be performed by the Department of Defense. However, when it is necessary to seek the assistance of contractors, they may often be in a position to favor their own products or capabilities. To overcome this possibility of bias, such contractors are to be prohibited from supplying a system or services procured on the basis of work statements growing out of their services.

No prohibitions are imposed on development contractors for the reasons given in the explanation to Rule 2.

Example A: Company A receives a contract to define the detailed performance characteristics the Department of Defense will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Department of Defense to choose competitively a contractor to develop or produce the fuels. Company A shall not be permitted to bid on this procurement.

Example B: Company A receives a contract to prepare a detailed plan for the procurement of services aimed at the advanced scientific and engineering training of Department of Defense personnel. It suggests a curriculum which the Department of Defense endorses and incorporates in requests for proposals to various institutions to establish and conduct such training. Company A shall not be permitted to bid on this procurement.

Example C: Company A prepares a feasibility study of a new weapons system without proposing in detail the characteristics of a possible final device. It may bid to produce the system or components thereof.

4. If a contractor agrees to conduct studies or provide advice concerning a system, which work requires access to proprietary data of other companies, the contractor must agree with such companies to protect such data from unauthorized use or disclosure so long as it remains proprietary. In addition, the contractor shall not be permitted to utilize the data in supplying the system, or components thereof, procured, either by formal advertising or negotiation, as a direct result of that study or advice, or in performing for the Department of Defense additional studies in the same field which are obtained competitively.

Explanation: Proprietary data is information considered so valuable by its owners that it is held secret by them and their licensees. Where a contractor must obtain such data from others for purposes of the study, and can obtain it by the leverage of the Department of Defense contract, he will gain an advantage over other companies unless there are restrictions upon his use of the data. Such restrictions are necessary both to protect the data, and to encourage companies to furnish it to contractors for the necessary performance of the Department of Defense contract. The rule is not intended to protect proprietary data furnished voluntarily by companies without limitations as to use, or data which falls into the public domain.

Example A: Company A is selected to study the use of lasers in military communications. The Department of Defense will request that firms doing research in the field make proprietary data available to A. In order to receive the contract, A must agree with such firms to protect any proprietary data it obtains, so long as it remains proprietary, and shall not be permitted to utilize the data in supplying any lasers to the Department of Defense. Furthermore, while A could not receive a competitively awarded contract to perform additional studies of lasers using such data, it may receive a sole source contract for such studies.

Review and Waiver

The contracting officer is responsible for applying these rules to contracts under his cognizance. If the prospective contractor disagrees with his decision, the contracting officer shall report his decision, and the contentions of the contractor, through channels to an Assistant Secretary of a Military Department or the Director of a Defense Agency for decision.

Any of the prohibitions imposed by these rules may be waived by an Assistant Secretary of a Military Department or the Director of a Defense Agency if he determines that a failure to waive the prohibition will be prejudicial to the best interests of the Government.

APPENDIX H—MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

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APPENDIX H

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

H–000 Scope of MILSTRIP. Military Standard Requisitioning and Issue Procedure (MILSTRIP), as the name implies, is a requisitioning and issue procedure for use by the Military Departments and contractors authorized by the terms of a contract, to requisition or move Government material to supply control cognizance. MILSTRIP is a system with uniform codes and punch-card formats designed to provide standard procedures of requisitioning, receiving, and returning Government material and to permit the maximum utilization of automatic data processing equipment.

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Part 1—Introduction

H-100 Scope of Manual. This Manual provides policies, procedures, forms and instructions for use by contractors in the requisitioning of Government-furnished material (GFM) and the return of such material when directed by the cognizant Military Department in accordance with the requirements of the MILSTRIP system.

H-101 Applicability of Manual.

(a) These procedures, forms, and instructions for the requisitioning and returning of government-furnished material are prescribed for use by contractors when required by the terms of a contract pursuant to the appropriate Government Property clause as referenced in Section XIII. For the purpose of this Manual, the Defense Personnel Support Center may furnish the following items of special tooling under these procedures: shoe lasts, shoe patterns, hubs, dies, shaping blocks, printing rollers, printing roller containers, and inspection gauges.

(b) These procedures are not applicable to in-house control of Government-furnished material. Neither are MILSTRIP procedures applicable to the movement of Government-furnished material within or between contractors.

(c) These procedures do not prescribe the frequency of submitting requisitions, nor do they prescribe the source of supply or specify the material to be furnished by the Government, which shall be determined by the Military Department.

(d) Any requisition placed on a distribution system is a requirement for a serviceable item, unless otherwise agreed to between the Military Department and the contractor. However, this does not change the contractual obligations of the parties, and when the provisions of a contract are in conflict with this Manual, the specific terms of the contract shall govern. However, the codes, forms and formats contained in this Manual will be used as prescribed.

H-102 Definitions. As used in this Manual, the following terms shall have the meanings set forth below.

H-102.1 *Advice Codes*. A coding structure for the purpose of transmitting instructions considered by the originator of requisitions to be essential to the desired supply action. Insertion of advice codes is at the discretion of the initial document originator. These codes are opposite to status codes in that directional flow is reversed. (See H-607.)

H-102.2 *Document Identifier*. A code that identifies the basic type of administrative action, the specific sub-type of supply transaction, and related modifying instructions for each type of supply document used throughout the requisitioning, processing, and issuing functions or other types of supply transactions within and between military supply and distribution systems. (See H-602.)

H-102.3 *Routing Identifier*. A code that identifies a specific supply and distribution organization as to its Military Department or governmental ownership and its geographical location. Routing identifier codes required by contractors will be provided in the contract or otherwise furnished by the procuring Military Department or Government Agency.

H-102.4 *Status Codes*. A coding structure for the purpose of transmitting status information from the inventory manager and/or supply source to the originator of a requisition or the consignee. These codes are the opposite of advice codes in that directional flow is reversed. (See H-607.)

H-102.5 *Government-Furnished Material*. Property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor, and which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, a raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

H-102.6 *Passing Actions* (*Generic Term*). A general term identifying all types of supply actions associated with materiel demands within military supply distribution systems. The term is applicable when forwarding materiel demands from one military supply source to another military supply source. Specific types of passing actions are passing orders and referral orders.

H-102.7 *Passing Order*. An order used to pass an erroneously routed requisition to the appropriate military depot or distribution point and to pass a requisition from one military distribution system to another.

H-102.8 *Referral Order*. An order used between depots, inventory managers, or other managers in an established supply distribution system for the purpose of passing correctly routed requisitions for continued supply action when the initial activity cannot fill the demand.

Part 2—General Policies

H-200 Scope of Part. This Part (i) sets forth procedures and instructions for amending and deviating from this Manual, (ii) prescribes the forms for use by contractors, and (iii) contains general policies on the use by contractors of the MILSTRIP system.

H-201 System Maintenance.

(a) The Defense Supply Agency (DSA) is responsible for the Military Standard Requisitioning and Issue Procedure as prescribed by this Manual.

(b) Recommendations, revisions, or suggested changes originated by contractors shall be forwarded to the cognizant contract administration office.

(c) Recommendations, revisions, or suggested changes received and concurred in or originated by the Military Departments shall be forwarded to the Director, Defense Supply Agency, Attention: DSAH-LS, Cameron Station Alexandria, Virginia 22314.

(d) Changes to this Manual shall be coordinated by the Defense Supply Agency. The provisions of the Armed Services Procurement Regulation pertaining to deviations (see 1-109) and to amendments (see 1-105) do not apply to this Manual. Requests by the Military Departments for deviations or waivers from this Manual may be approved by the Defense Supply Agency, but only the Assistant Secretary of Defense (Installations and Logistics) may disapprove such requests.

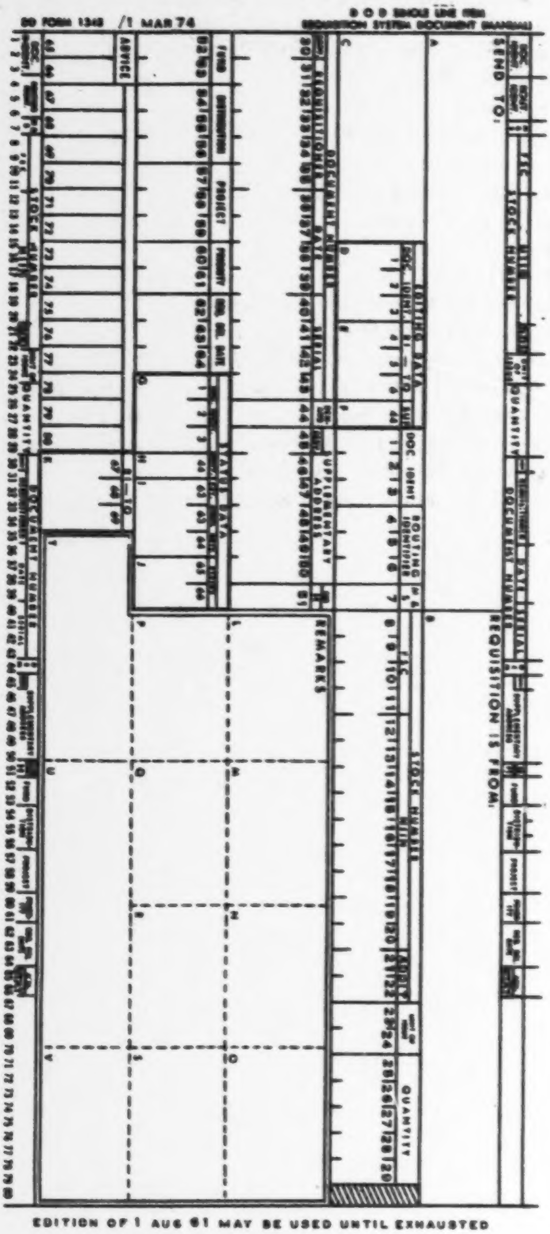
H-202 Forms and Use.

H-202.1 *DoD Single Line Item Requisition System Document* (*Manual*) (*DD Form 1348*). DD Form 1348 is a four or six part form consisting of either two electrical accounting machine (EAM) cards—manila or paper (arranged as the first copy and the fourth or sixth copy), with two or four paper forms, carbon interleaved. The use of EAM cards or paper as the first and fourth or sixth copies is optional. However, when paper is used, the first copy shall be bond paper or equivalent, and the fourth or sixth copy may be bond paper or tissue. The form size shall remain unchanged when either cards or paper is used. All copies are identical in format except that the original copy does not provide for unit and total price data. In addition, the original card, when used, is upper left corner cut. DD Form 1348 appears as follows (see also F-200.1348):

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DoD Single Line Item Requisitioning System Document (Manual) (DD Form 1348)

USE TYPEWRITER OR BALL POINT PEN
PRESS HARD
TO ASSURE LEGIBILITY ON ALL COPIES



DD FORM 1348 /1 MAR 74

D O D SINGLE LINE ITEM REQUISITION SYSTEM DOCUMENT (MANUAL)

EDITION OF 1 AUG 61 MAY BE USED UNTIL EXHAUSTED

H–202.1

DD Form 1348 is used as a:

(i) manual requisition,
(ii) manual followup,
(iii) manual cancellation, and
(iv) manual requisition modifier.

H-202.2 *DoD Single Line Item Requisition System Document (Mechanical) (DD Form 1348m)*. DD Form 1348m is a standard electrical accounting machine (EAM) card—"Natural," with upper left corner cut. DD Form 1348m appears on next page (see also F-200.1348m). DD Form 1348m is used as a:

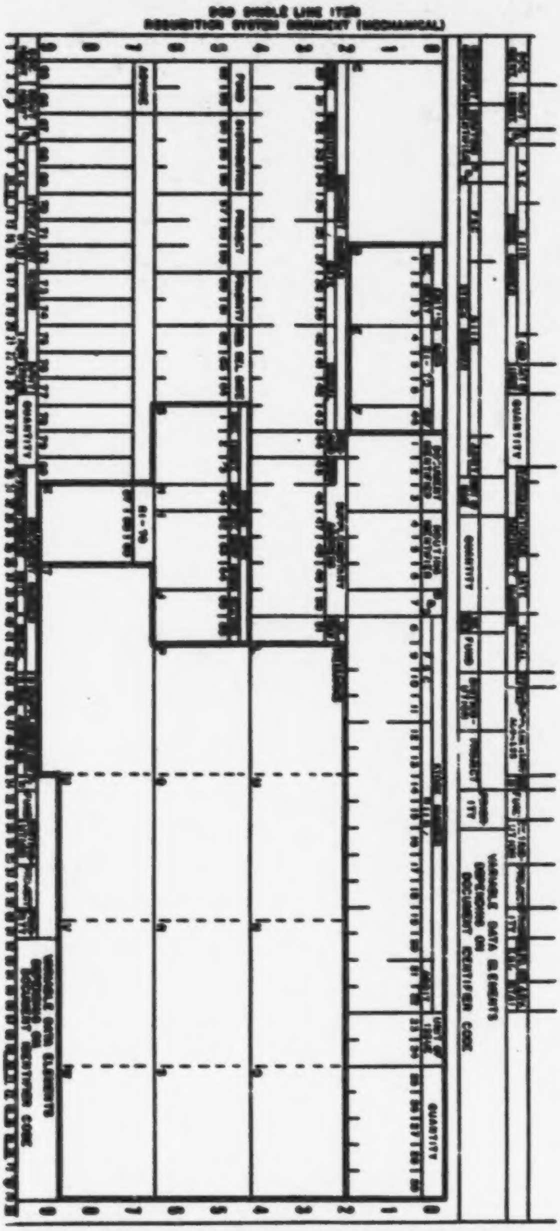
(i) requisition,
(ii) followup,
(iii) cancellation,
(iv) supply status card,
(v) reply to followup,
(vi) shipment status card,
(vii) passing order,
(viii) referral order,
(ix) reply to cancellation request, and
(x) requisition modifier.

H-202.3 *DoD Single Line Item Release/Receipt Document (DD Form 1348-1)*. DD Form 1348-1 is a six-part paper carbon interleaved continuous form of pin-feed, tear-away configuration, measuring 8 inches wide (usable) and 5 - 1 / 2 inches in length (top to bottom). The form is designed to accept 10 printed characters to the inch. This form may be reproduced when additional copies are required. DD Form 1348-1 appears as follows (see also F-200.1348-1):

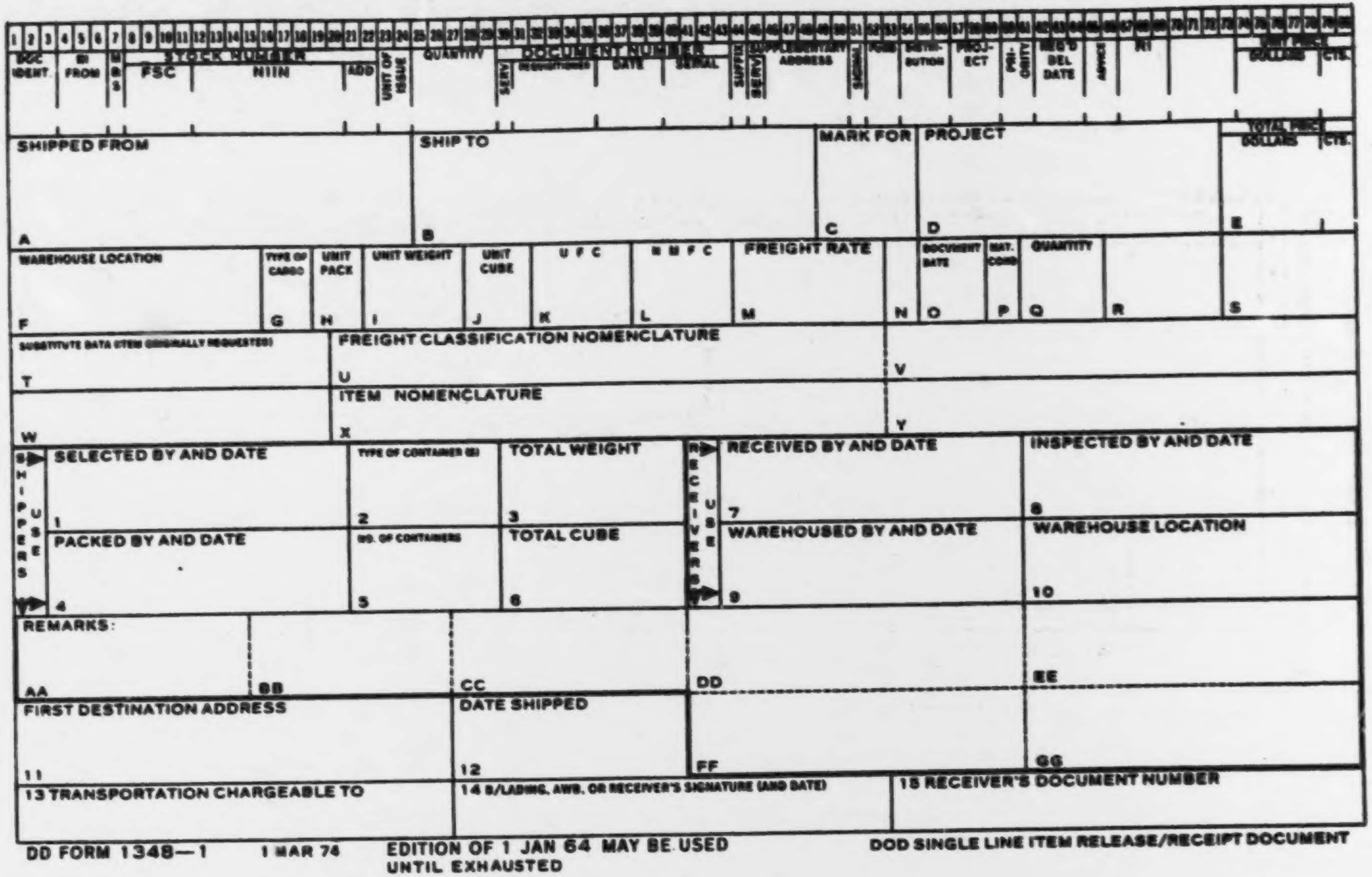
MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DOD Single Line Item Requisition System Document (Mechanical) (DD Form 1348m)

DOD SINGLE LINE ITEM REQUISITION SYSTEM DOCUMENT (MECHANICAL)



DD FORM 1348m 1 MAR 74 EDITION OF 1 APR 71 MAY BE USED



1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80

DOC IDENT. | RI FROM | M & S | STOCK NUMBER: FSC, NIIN, ADD | UNIT OF ISSUE | QUANTITY | DOCUMENT NUMBER: SERV, REQUISITIONER, DATE, SERIAL | SUFFIX | SUPPLEMENTARY ADDRESS: SERV | SIGNAL | FUND | DISTRIBUTION | PROJECT | PRIORITY | REQ'D DEL DATE | ADVICE | RI | UNIT PRICE: DOLLARS, CTS.

SHIPPED FROM A

SHIP TO B

MARK FOR C

PROJECT D

TOTAL PRICE DOLLARS CTS. E

WAREHOUSE LOCATION F

TYPE OF CARGO G

UNIT PACK H

UNIT WEIGHT I

UNIT CUBE J

U F C K

N M F C L

FREIGHT RATE M

N

DOCUMENT DATE O

NAT. COND P

QUANTITY Q

R

S

SUBSTITUTE DATA (ITEM ORIGINALLY REQUESTED) T

FREIGHT CLASSIFICATION NOMENCLATURE U

V

W

ITEM NOMENCLATURE X

Y

SHIPPERS USE

1 SELECTED BY AND DATE

2 TYPE OF CONTAINER (S)

3 TOTAL WEIGHT

4 PACKED BY AND DATE

5 NO. OF CONTAINERS

6 TOTAL CUBE

RECEIVERS USE

7 RECEIVED BY AND DATE

8 INSPECTED BY AND DATE

9 WAREHOUSED BY AND DATE

10 WAREHOUSE LOCATION

REMARKS: AA

BB

CC

DD

EE

11 FIRST DESTINATION ADDRESS

12 DATE SHIPPED

FF

GG

13 TRANSPORTATION CHARGEABLE TO

14 B/LADING, AWB, OR RECEIVER'S SIGNATURE (AND DATE)

15 RECEIVER'S DOCUMENT NUMBER

DD FORM 1348—1 1 MAR 74 EDITION OF 1 JAN 64 MAY BE USED UNTIL EXHAUSTED DOD SINGLE LINE ITEM RELEASE/RECEIPT DOCUMENT

BEST DOCUMENT AVAILABLE

630

DD Form 1348–1 is used as a:

(i) release document from distribution point to consignee resulting from a requisition,
(ii) receipt document by the consignee, and
(iii) shipping document for GFM turn-in.

H–202.4 *Messages*. Messages may be used for transmitting requisitions, followups, and cancellations. Set forth below is a sample of a message containing multi-requisitions.

SAMPLE MESSAGE FORMAT

```
(Insert Addressee)
(Insert Message Number)
MILSTRIP REQUISITIONS:
1. A0A/FMZ/6/5950001234567/EA/00040/EY9185/7049/0001/
   N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B
2. A0A/FMZ/F/5950002345678/EA/00021/EY9185/7049/0002/
   O/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/*BLNK
3. A0E/FMZ/6/12343456789/EA/00015/EY9185/7049/0003/
   N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B
   Remarks: Mfg Part Number referenced on Page 121 of
            Technical Instruction No. 45.
4. A0A/FMZ/W/5950005671234/EA/00024/7049/0004/
   N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B
```

For explanatory purposes, the first requisition (item 1) is segmented and explained.

First Line: A0A/ (Document Identifier), FMZ/ (Routing Identifier), 6/ (Media and Status), 5950/ 00/ 1234567/ (Stock or Part Number), EA/(Unit of Issue), 00040/ (Quantity), EY9185/ (Requisitioner), 7049/ (Julian Date), 0001/ (Serial Number).

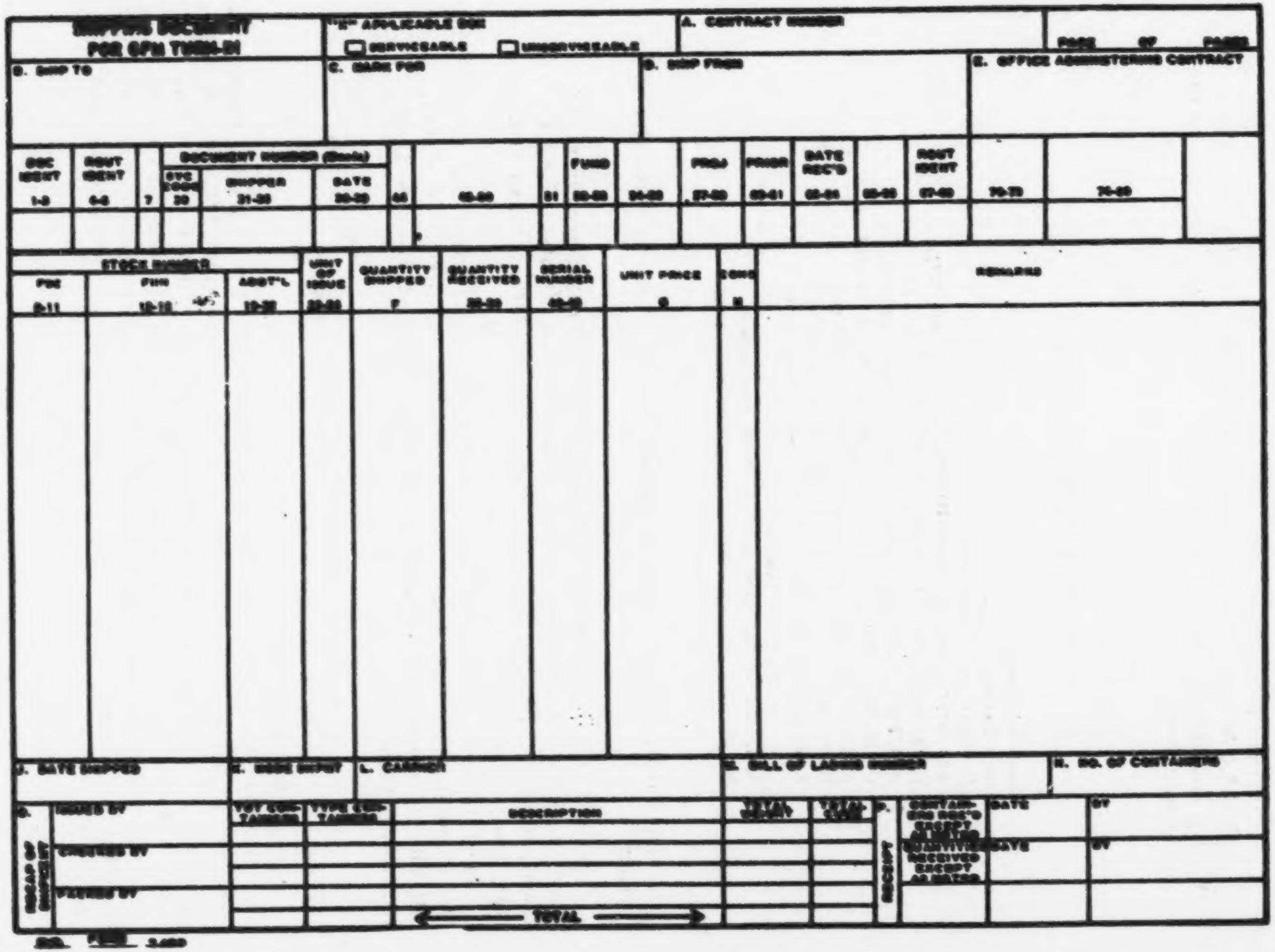
Second Line: N/ (Demand Code), *BLNK/ (Supplementary Address), D/ (Signal), *BLNK/ (Fund Code), *BLNK/ (Distribution Code), *BLNK/ (Project), 07/ (Priority), *BLNK/ (Required Delivery Date), 2B/(Advice Code).

*When an element of data is not applicable, the field shall be recognized and entered as "BLNK."

H–202.5 *Shipping Document for GFM Turn-In* (*DD Form 1483*). DD Form 1483 is a document authorized for turn-in of Government-furnished material. Department of Defense Forms, other than the DD Form 1483, used for turn-in shall contain as a minimum the data prescribed in H–502. The DD Form 1483 may be used for multi-line or single-line turn-ins and accommodates all requirements for essential data elements. DD Form 1483 is set forth on the following pages. (See also F–200.1483.)

BEST DOCUMENT AVAILABLE

BEST DOCUMENT AVAILABLE



SHIPPING DOCUMENT FOR GFM TURN-IN
"X" APPLICABLE BOX ☐ SERVICEABLE ☐ UNSERVICEABLE
A. CONTRACT NUMBER
PAGE OF PAGES
B. SHIP TO
C. MARK FOR
D. SHIP FROM
E. OFFICE ADMINISTERING CONTRACT

DOC IDENT 1-3	ROUT IDENT 4-6	7	DOCUMENT NUMBER (Basic) SVC CODE 30	SHIPPER 31-35	DATE 36-39	44	45-50	51	FUND 52-53	54-56	PROJ 57-59	PRIOR 60-61	DATE REC'D 62-64	65-66	ROUT IDENT 67-69	70-73	74-80	

STOCK NUMBER FSC 8-11	FIIN 12-18	ADDT'L 19-22	UNIT OF ISSUE 23-24	QUANTITY SHIPPED F	QUANTITY RECEIVED 25-29	SERIAL NUMBER 40-43	UNIT PRICE G	COND H	REMARKS

J. DATE SHIPPED
K. MODE SHIPMENT
L. CARRIER
M. BILL OF LADING NUMBER
N. NO. OF CONTAINERS

O. RECAP OF SHIPMENT		NO. OF CONTAINERS	TYPE CONTAINERS	DESCRIPTION	TOTAL WEIGHT	TOTAL CUBE	P. RECEIVED			
	ISSUED BY							CONTAINERS REC'D EXCEPT AS NOTED	DATE	BY
	CHECKED BY							QUANTITIES RECEIVED EXCEPT AS NOTED	DATE	BY
	PACKED BY			← TOTAL →						

DD FORM 1483

Shipping Document for GFM Turn-In (DD Form 1483)

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MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

H-202.6 *Multiuse Standard Requisitioning/Issue System Document* (*Standard Form 344*). Standard Form 344 is a multi-line item paper document designed to accommodate a maximum of fifteen single line items on one sheet. The form may be used as a requisition by Defense contractors for requisitioning Government-furnished material when such use is approved by the Military Service.

(a) The Standard Form 344 is a multiple part, paper document, measuring 10 - 1 / 2 inches by 8 inches. The form may be prepared manually by pen or typewriter. The form consists of two parts which reflect document identification data and requisition data. The document identification data serves to identify a single document and is applicable to each line item being requisitioned. The requisition data are the data applicable to the specific item being requisitioned. No deviations or modifications are authorized in the size, format, or use of the SF 344 than as prescribed in this Manual.

(b) The block alignment of SF 344 is compatible with the numeric block alignments of DD Forms 1348 and 1348m.

(c) The data entries of SF 344 are the same as prescribed for requisitions submitted on DD Forms 1348 and 1348m. The signature block is not required to be completed on contractor requisitions submitted on Department of Defense supply sources. Block 23 (Remarks) is provided for entry of data necessary to assist in supply decisions and which cannot be accommodated by the prescribed MILSTRIP codes.

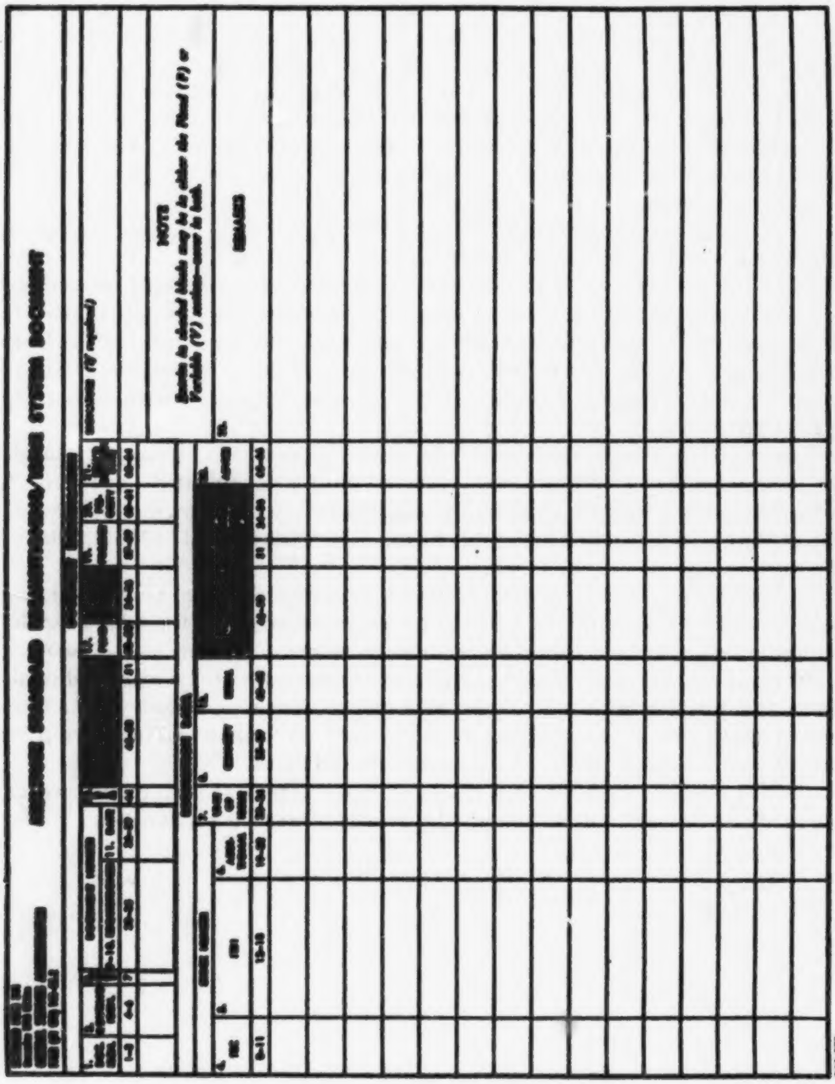
(d) Each item contained on SF 344 will be processed separately as a single line without regard to other items contained on the document. In this respect, subsequent transactions, such as status, cancellations, follow-ups, etc., will be accomplished on a single line item basis by use of the DD Form 1348 or 1348m or message.

(e) When the form is used to requisition items not identified by stock or part numbers, the item descriptions may be written across an entire line or lines under requisition data, without regard to columnar headings. Such data as the quantity, serial No., supplementary address, signal and advice codes will be entered directly below the item descriptions in appropriate blocks. When more than one delivery date is applicable to a single item, block 21 will be left blank and delivery dates reflected on the line(s) directly beneath the desired items.

(f) The form may be completed in as many copies as required. However, only the original copy will be submitted to supply sources as a requisition.

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Multiuse Standard Requisitioning/Issue System Document (Standard Form 344)



H–203 Priority Designators on Requisitions for Government-Furnished Materials. When a Military Department executes a contract which provides that a contractor will requisition government-furnished materiel, the contracting officer will advise the contractor of the Priority Designators to be shown in such contractor-prepared requisitions. The advice will take cognizance of the Force Activity Designator of the National priority, program or force/activity for which the contract is executed, and potential urgencies of need in accordance with DoD Directive 4410.6 (Uniform Materiel Movement and Issue Priority System).

H–204 Time-Frames. Time-frames have been established for furnishing supply status and for delivery of material as follows:

(i) Supply status—

Priority Designator	*Dispatched After Receipt of Requisition or Follow-up*
1 through 08	within 2 days
09 through 15	within 5 days

(ii) Delivery of Materiel CONUS (includes Canada)—

Priority Designator	*From Requisition Date to Receipt of Material by Consignee*
1 through 03	6 days *
04 through 08	10 days **
09 through 15	26 days ***

(iii) Delivery of Materiel Overseas—

Priority Designator	*From Requisition Date to Receipt of Material by Consignee*		
	Area 1	*Area 2*	*Area 3*
01 through 03	10 days *	10 days *	11 days *
04 through 08	14 days **	14 days **	15 days **
09 through 15	64 days ***	69 days ***	79 days ***

NOTE: Area 1 includes Alaska, Hawaii,
South America, Caribbean and North Atlantic.
Area 2 includes Northern Europe, Mediterranean,
and Africa.
Area 3 is Western Pacific.

Time standards for delivery of Materiel (CONUS and Overseas) are extended one day for Priority Designator 01–08 requisitions and two days for Priority Designator 09–15 requisitions when the initial supply source passes the requisition to another supply source for action. Passing actions are identified by Supply Status documents containing Supply Code BK or BM in columns 65–66.

*Based on 24 hour work schedule, 7 days per week. Time in days includes Saturdays, Sundays, and holidays.

**Based on 24 hour work schedule, 6 days per week.

***Based on a normal work week as a minimum.

H-205 Status Data.

H-205.1 *General.* The MILSTRIP system requires that processing elements of the military supply activity show action taken or being taken on certain requisitions. The term for this information is known as "status data" and the specific types of such data are categorized as exception status, 100% supply status, and shipment status.

H-205.2 *Exception Status.* Exception status is any of the following non-positive supply availability decisions, alone or in combination:

(i) back order,
(ii) procurement for direct delivery,
(iii) partial issue or partial other action,
(iv) substitution,
(v) change of unit of issue,
(vi) requisition returned for specific cause,
(vii) passing order,
(viii) referral order,
(ix) cancellation acknowledgement, and
(x) any circumstance which predicts that issue may not be made within the number of days established for the priority assigned.

H-205.3 *100% Supply Status.* The 100% supply status is each and every distribution decision, positive or negative.

H-205.4 *Shipment Status.* Shipment status is advice of estimated or actual shipment dates including the transportation control number or Government bill of lading number, mode of shipment, and port of embarkation for shipments destined overseas.

H-206 Followups. The MILSTRIP system provides for followups. A followup may be submitted by the requisitioner or supplementary addressee provided that status data is not on hand and the time-frame for receiving such data has elapsed, or the time-frame for the receipt of material has elapsed.

H-207 Media and Transmission of MILSTRIP Documents. The MILSTRIP forms and procedures are designed for both manual and mechanized application, transmission, and processing of requisitions and follow-on transactions. Methods of submission and transmission, in order of preference, are as follows:

(i) transceiver;
(ii) air or regular mail, with the container conspicuously marked "MILSTRIP";
(iii) courier;
(iv) administrative electrical message; and
(v) telephone or radio.

H-208 Required Delivery Date.

(a) Normally, a required delivery date will not be placed on a requisition. However, if the prescribed time-frame for the priority assigned does not meet the "actual need date", a required delivery date may be placed on the requisition indicating that the material must be delivered by that specific date to preclude work stoppage.

(b) On Defense Supply Agency bailment type contracts, the required delivery date indicates the date on which the Government-furnished material must be ready for pickup at the Military Department distribution point by a carrier (contractor's truck or commercial carrier designated by the contractor).

H-209 Codes.

H-209.1 *General*. Part 6 provides the codes and other data normally required by contractors on a repetitive basis to:

(i) requisition and turn-in Government-furnished material,
(ii) prepare cancellation of requisitions,
(iii) initiate followups on requisitions, and
(iv) interpret status.

Infrequently used codes and codes of limited application will, if required, be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency.

H-209.2 *Routing Identifier*. The name, address and routing identifier code of the supply and distribution organization responsible for MILSTRIP supply support will be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency. When more than one supply and distribution organization is responsible for MILSTRIP supply support, the name, address, routing identifier code and logistic responsibility assigned each supply and distribution organization will be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency.

H-210 Addresses. Contractors shall use their activity address codes, as assigned by the Military Departments, on MILSTRIP documents. These identifying codes are published for the Departments in the DoD Activity Address Directory (DODAAD), DoD 4000.25D.

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MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Part 3—Requisitions, Followups, Cancellations and Requisition Modifiers

H-300 Scope of Part. This Part sets forth uniform instructions for the preparation, submission, and distribution of MILSTRIP documents for use as requisitions, followups, cancellations and requisition modifiers.

H-301 General. Depending on the mechanized capabilities of the contractor, the means of transmitting the request, and the urgency of need, the requisition may be prepared as a manual requisition on a DD Form 1348 or Standard Form 344, a prepunched requisition on a DD Form 1348m, or as a message-type or telephonic request. Requisitions may be prepared by either the contractor or the Procuring Activity, as specified in the contract.

H-302 Preparation and Utilization of the DOD Single Line Item Requisition System Document (Manual) (DD Form 1348). See H-202.1.

H-302.1 *Uses.* Contractors not having mechanized capabilities shall utilize DD Form 1348 for the following purposes:

(i) manual requisitions,
(ii) manual followups,
(iii) manual cancellations, and
(iv) manual requisition modifiers.

H-302.2 *Use of DD Form 1348 as a Requisition.* When used as a requisition, DD Form 1348 shall be prepared as follows:

Item	*Explanation and Instructions*
Block A—Send to:	**Enter "in the clear" the source of supply addresses as indicated by the Military Department.**
Block B—Requisition is from:	**Enter "in the clear" contractor's name and activity address code furnished by the Military Department, and address of the contractor.**

NOTE: Block C and heavy black-bordered blocks D through K and columns 67 through 71 and 73 through 80 in block 23 shall be left blank.

Block 1—Document identifier.	**Enter one of the following 3-digit document identifier codes:**

Req. for Domestic Shipment		*Req. for Overseas Shipment*
A0A	**w/NSN**	**A01**
A0B	**w/Part No.**	**A02**
A0C	**w/NATO No.**	**A03**
A0D	**w/Other**	**A04**
A0E	**w/Written data**	**A05**

See H-602.

Block 2—Routing identifier.	**Enter the 3-digit routing identifier code indicating the source of supply to which the requisition is to be submitted.**

Item	*Explanation and Instructions*
Block 3—Media and status code.	Enter one of the following codes indicating the type of status required, the activity to receive status, and the communication method by which status is to be transmitted:

(a) Numeric Series:

- 0 No status to requisitioner or supplementary addressee.
- 2 Exception status to requisitioner by transceiver.
- 3 Exception status to requisitioner by mail.
- 4 Exception status to supplementary addressee by transceiver.
- 5 Exception status to supplementary addressee by mail.
- 6 Exception status to requisitioner by message.
- 7 Exception status to supplementary addressee by message.

(b) Alpha Series:

- B 100% supply status to requisitioner by transceiver.
- C 100% supply status to requisitioner by mail.
- D 100% supply status to supplementary addressee by transceiver.
- E 100% supply status to supplementary addressee by mail.
- F 100% supply status to requisitioner by message.
- G 100% supply status to supplementary addressee by message.
- K Exception status plus shipment status to requisitioner by transceiver.
- L Exception status plus shipment status to requisitioner by mail.
- M Exception status plus shipment status to supplementary addressee by transceiver.
- N Exception status plus shipment status to supplementary addressee by mail.
- P Exception status plus shipment status to supplementary addressee by message.
- R Exception status plus shipment status to requisitioner by message.
- S 100% supply status plus shipment status to requisitioner by transceiver.
- T 100% supply status plus shipment status to requisitioner by mail.
- U 100% supply status plus shipment status to supplementary addressee by transceiver.
- V 100% supply status plus shipment status to supplementary addressee by mail.
- W 100% supply status plus shipment status to requisitioner by message.
- X 100% supply status plus shipment status to supplementary addressee by message.

Item	*Explanation and Instructions*
Blocks 4, 5, and 6—Stock or part number.	In blocks 4 and 5, enter the national stock number of item requested. Block 6 shall be utilized for additional identification data when required by the Military Department. See H-603.
Block 7—Unit of issue	Enter the two-letter abbreviation as shown in the applicable catalog or stock list; *e.g.*, Ea, LB, Ft.
Block 8—Quantity	Enter the quantity being requisitioned. If the quantity exceeds 99,999, prepare additional requisitions as required. Zeros shall precede significant numerics.
Blocks 9, 10, 11, and 12—Document number.	Enter the 14-digit number constructed as set forth below (see also H-604).
Block 9—Service	Enter the alphabetic code (For Contractor Use Only) used to identify the military organization. See H-601.
Block 10—Requisitioner	Enter the applicable activity address code of the requisitioner as listed in the DoD Activity Address Directory.
Block 11—Date	Enter the Julian day calendar date (see H-609), i.e., in the first column indicate the last numeric digit of the calendar year (for example, "3" for 1963, "4" for 1964) and in the last three columns indicate the numeric consecutive day of the calendar year (for example, "004" for 4 January, "157" for 6 June).
Block 12—Serial number	Enter the serial number of the requisition. This number will be assigned by the requisitioner but shall not be duplicated on any one day. See H-604.3(d) for certain limitations in the assignment of the serial number. NOTE: May be used to code contract numbers, if desired.
Block 13—Demand	Enter the appropriate demand code as follows: (a) An "R" shall be used if it is a recurring demand (a demand to replenish material utilized on a day-to-day basis). (b) An "N" shall be used if it is a nonrecurring demand (a demand made on a onetime basis). (c) An "O" shall be used if a requisitioning activity is submitting requisitions for substitute items which are acceptable in lieu of previously requisitioned, but delayed, items.

Item	*Explanation and Instructions*
Blocks 14 and 15—Supplementary address.	When material is to be "shipped to" or "billed to" an activity other than the requisitioner, the activity address code identifying the "ship to" or "bill to" activity shall be entered. See H-603.
Block 16—Signal ----------	Enter one of the following codes which indicate the "ship to" or "bill to" activity when applicable:

Ship to Requisitioner	*Bill to*
A	Blocks 9 and 10.
B	Blocks 14 and 15.
C	Bill to activity designated by block 17. However, if the third digit of the document identifier is "5" or "E," the Remarks block may indicate other billing information. See H-606.
D	No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

Ship to Supplementary Address	*Bill to*
J	Blocks 9 and 10.
K	Blocks 14 and 15.
L	Bill to activity designated by block 17. However, if the third digit of the document identifier is "5" or "E," the Remarks block may indicate other billing information. See H-606.
M	No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

See H-605.

NOTE: Codes A,B,C,J,K, and L will be provided by the contract or otherwise furnished by the Military Department to the contractor.

Block 17—Fund code -------	Enter fund code furnished by the Military Department, if applicable. See H-606.
Block 18—Distribution -----	Leave blank, unless directed otherwise by the Military Department.
Block 19—Project ---------	Leave blank, unless directed otherwise by the Military Department.
Block 20—Priority ---------	Enter appropriate priority designator in accordance with H-203.
Block 21—Required delivery date.	Will normally be left blank. The date will be entered only when conditions meet the requirements set forth in H-206.
Block 22—Advice ----------	Enter the applicable advice code to convey instructions to the supply source, if necessary. When code is not required, leave blank. See H-607.

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Item	*Explanation and Instructions*
Block 23—	
Columns 67–71	Leave blank.
Column 72	Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. See H–615.
Columns 73–80	Leave blank.
Blocks L thru V—Remarks.	In the Remarks block, enter any additional information not provided for in the requisition format. When data are entered in the Remarks field, the third digit of the document identifier code entered in block 1 must be an "E" or "5", as appropriate. When required by the Military Department, the contract number shall be entered in the "Remarks" blocks.

H–302.3 *Use of DD Form 1348 as a Followup.*

(a) When used as a followup and when no status has been received from the supply source, DD Form 1348 shall be prepared as follows:

Block 1—Document identifier.	Followups will be initiated by the requisitioner (Code AF1) or the supplementary addressee (Code AF2).
All other blocks	Enter duplicate entries from the original requisition.

(b) When used as a followup and status has been received from the supply source, DD Form 1348 shall be prepared as follows:

Block A—Send to:	Enter "in the clear" address of the last known source of supply as indicated in the latest status document. When this block is used, block 2 may be left blank.
Block 1—Document identifier.	Enter the code AF1 or AF2.
Block 2—Routing identifier.	Enter the code identifying the last known supply source indicated on the supply status card. When this block is used, block A may be left blank.
All other blocks	Duplicate the entries in the last status card received.

H–302.4 *Use of DD Form 1348 as a Cancellation.*

(a) A cancellation, in whole or in part, shall be initiated only by the requisitioner or the supplementary addressee. When cancellation is necessary, DD Form 1348 shall be prepared as follows:

Item	*Explanation and Instructions*
Block A—Send to:	Enter "in the clear" address shown on the original requisition or the "in the clear" address of the last known source as indicated on the latest status document.
Block B—Requisition is from:	Enter "in the clear" address of the activity requesting cancellation.

Item	*Explanation and Instructions*
Block 1—Document identifier.	Cancellation will be initiated by the originator (Code AC1) or the supplementary addressee (Code AC2).
Block 2—Routing identifier.	Enter the appropriate code for the last known source of supply.
Blocks 4, 5, and 6—Stock number.	Enter stock number shown on requisition or supply status card.
Block 7—Unit of issue ----	Enter the unit of issue as shown on the requisition or status card.
Block 8—Quantity --------	Enter the quantity for which cancellation is requested.
Block 13—Demand --------	Enter the suffix code as shown in the supply status card, when applicable. Otherwise, enter demand code from requisition.
All other blocks ----------	Enter identical information in other blocks as shown on original requisition or supply status card.

(b) Cancellation requests shall not be submitted for requisitioned materiel destined for CONUS contractor activities after receipt of shipment status information advising that shipment has occurred.

(c) Cancellation requests shall not be submitted for requisitioned materiel destined for overseas contractor activities after receipt of shipment status or lift information advising that:

(i) the materiel has been shipped by air or parcel post,
(ii) the total value of the materiel is less than $200,
(iii) the materiel has been lifted from a CONUS port, and
(iv) the materiel was shipped 45 or more days prior.

H-302.5 *Use of DD Form 1348 as a Requisition Modifier*. See H-307.

H-302.6 *Submission to the Supply Source*. Methods of submission of DD Form 1348 to the supply source are as follows:

(i) air or regular mail, with the container conspicuously marked "MILSTRIP";
(ii) courier;
(iii) administrative electrical message; and
(iv) telephone or radio.

H-302.7 *Confirmation Copies*. When requisitions are relayed by telephone, radio, or electrical message, confirmation copies are not required and shall not be forwarded.

H-302.8 *Distribution of DD Form 1348*.

(a) When used as a requisition, copies of DD Form 1348 shall be distributed as follows:

(i) original—to supply source, and
(ii) remaining copies—for contractor use.

(b) When used as a followup or a cancellation, copies of DD Form 1348 shall be distributed as follows:

(i) original—to supply source, except when status has been received indicating that another activity is responsible for processing the demand (In such case, submit to activity so designated on the status card.), and

(ii) remaining copies—for contractor use.

H-303 Preparation and Transmission of DoD Single Line Item Requisition System Document (Mechanical) (DD Form 1348m).

H-303.1 *Use of DD Form 1348m as a Requisition.*

(a) Contractors with mechanized capabilities shall prepare a punched DoD Single Line Item Requisition System Document (Mechanical) (DD Form 1348m) for submission to the supply source by transceiver. However, air or regular mail, courier, or electrical media may be utilized for transmission of the punched card. When a requisition is prepared by using the DD Form 1348m, duplicates may be prepared for internal use by the requisitioning activity, as required.

(b) The DD Form 1348m (see H-202.2), prepared as a requisition, shall contain the required data punched in the appropriate card columns, as follows:

Card Columns	*Field/Legend*	*Explanation and Instructions*
1-3	Document Identifier.	Enter one of the following appropriate document identifier codes:

Req. for Domestic Shipment		*Req. for Overseas Shipment*
A0A	w/NSN	A01
A0B	w/Part No.	A02
A0C	w/NATO No.	A03
A0D	w/Other	A04
A0E	w/Written data	A05

Card Columns	*Field/Legend*	*Explanation and Instructions*
4-6	Routing identifier.	Enter code indicating supply source to which requisition is to be submitted.
7	Media and status.	Enter one of the following codes indicating the type of status desired, the activity to receive status and the communication method by which status is to be transmitted: (a) Numeric Series:

0 No status to requisitioner or supplementary addressee.

2 Exception status to requisitioner by transceiver.

3 Exception status to requisitioner by mail.

4 Exception status to supplementary addressee by transceiver.

5 Exception status to supplementary addressee by mail.

6 Exception status to requisitioner by message.

7 Exception status to supplementary addressee by message.

Card Columns	*Field/Legend*	*Explanation and Instructions*
7	Media and status—continued.	(b) Alpha Series: B 100% supply status to requisitioner by transceiver. C 100% supply status to requisitioner by mail. D 100% supply status to supplementary addressee by transceiver. E 100% supply status to supplementary addressee by mail. F 100% supply status to requisitioner by message. G 100% supply status to supplementary addressee by message. K Exception status plus shipment status to requisitioner by transceiver. L Exception status plus shipment status to requisitioner by mail. M Exception status plus shipment status to supplementary addressee by transceiver. N Exception status plus shipment status to supplementary addressee by mail. P Exception status plus shipment status to supplementary addressee by message. R Exception status plus shipment status to requisitioner by message. S 100% supply status plus shipment status to requisitioner by transceiver. T 100% supply status plus shipment status to requisitioner by mail. U 100% supply status plus shipment status to supplementary addressee by transceiver. V 100% supply status plus shipment status to supplementary addressee by mail. W 100% supply status plus shipment status to requisitioner by message. X 100% supply status plus shipment status to supplementary addressee by message. See H-607.
8-22	Stock or part number.	Enter stock or part number with additional identification data, when applicable. See H-603.
23-24	Unit of issue ---	Enter the two-letter abbreviation as shown in the applicable catalog or stock list; e.g., Ea, Lb, Ft.
25-29	Quantity -------	Enter quantity being requisitioned. If the quantity exceeds 99,999, prepare additional requisitions as required. Zeros shall precede significant numerics.
30-43	Document number.	Enter the 14-digit number constructed as set forth below (see also H-604).
30	Service --------	Enter the alphabetical code (For Contractor Use Only) used to identify the military service. See H-601.

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Card Columns	Field/Legend	Explanation and Instructions
31–35	Requisitioner	Enter the applicable activity address code of the requisitioner as listed in the DoD Activity Address Directory.
36–39	Date	Enter the Julian day calendar date (see H-609, *i.e.*, in the first column indicate the last numeric digit of the calendar year (for example, "3" for 1963, "4" for 1964), and in the last three columns indicate the numeric consecutive day of the calendar year (for example, "004" for 4 January, "157" for 6 June).
40–43	Serial number	Enter the serial number of the requisition. This number will be assigned by the requisitioner but shall not be duplicated on any one day. See H-604.3(d) for certain limitations in the assignment of the serial number. NOTE: May be used to code contract numbers, if desired.
44	Demand	Enter the appropriate demand code as follows: (a) An "R" shall be used if it is a recurring demand (a demand to replenish material utilized on a day-to-day basis). (b) An "N" shall be used if it is a nonrecurring demand (a demand made on a "one-time" basis). (c) An "O" shall be used if a requisitioning activity is submitting requisitions for substitute items which are acceptable in lieu of previously requisitioned, but delayed items.
45–50	Supplementary address.	When material is to be "shipped to" or "billed to" an activity other than the requisitioner, the service code and the activity address code identifying the "ship to" or "bill to" activity shall be entered. See H-608.
51	Signal	Enter one of the following codes which indicate the "ship to" and "bill to" activity:

Ship to Requisitioner	Bill to
A	Requisitioner.
B	Supplementary address.
C	Bill to activity designated by column 52. However, if the third digit of the identifier is "5" or "E", the Remarks block may indicate other billing information. See H-306.
D	No billing required. Not to be used on requisitions submitted to General Services Administration.

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Ship to Supplementary Address	*Bill to*
J	Requisitioner.
K	Supplementary address.
L	Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. See H-606.
M	No billing required. See H-605. Not to be used on requisitions submitted to General Services Administration.

NOTE: Codes A, B, C, J, K, and L will be provided by the contract or otherwise furnished by the Military Department to the contractor.

Card Columns	*Field/Legend*	*Explanation and Instructions*
52–53	Fund ----------	Enter fund code furnished by the Military Department, as applicable. See H-606.
54–56	Distribution ----	Leave blank, unless directed otherwise by the Military Department.
57–59	Project --------	Leave blank, unless directed otherwise by the Military Department.
60–61	Priority -------	Enter appropriate priority designator in accordance with H-203.
62–64	Required delivery date.	Will normally be left blank. The date shall be entered only when conditions meet the requirements set forth in H-208.
65–66	Advice ---------	Enter applicable advice code to convey instructions to the supply source, if necessary. When code is not required, leave blank. See H-607.
67–71	Blank ----------	Leave blank.
72	Management ---	Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. See H-615.
73–80	Blank ----------	Leave blank.

H-303.2 *Use of DD Form 1348m as a Followup.*

(a) Followups may be submitted only by the requisitioner or the supplementary addressee. Prior to submission, the contractor following up will ensure that status data are not on hand and that the time-frame for receipt of status has elapsed or that the time-frame for receipt of the material has elapsed.

(b) Followups for requisitions with Priority Designators 09 through 15 may be submitted only after expiration of at least ten days from the date of requisition or previous follow-up submission date. Followups for requisitions with Priority Designators 01 through 08 may be submitted only after expiration of 48 hours from the requisition submission date or previous follow-up submission date. Submission of followups under these criteria will be accomplished only after activities insure that:

(i) status information has been requested under the provisions of the Media and Status Code;

(ii) status data are not on hand to indicate a delay in receipt of material beyond the Standard Delivery Date or Required Delivery Date; or

(iii) the order and shipping time standards for receipt of material have elapsed.

Activities following up on overseas requisitions, prior to submission of follow-ups will insure that forty-eight hours have elapsed since the Required Delivery Date or the Standard Delivery Date expressed on the requisition, or that forty-eight hours have elapsed since expiration of the established time frame for receipt of status.

(c) Followups shall be submitted to the point to which the requisition was submitted, except when supply status has been received indicating that another supply activity is responsible for processing the demand. In the latter case, followup shall be to the activity indicated as currently processing the requisition (i.e., "last known source of supply", which is the distribution point holding the demand for decision to issue the material). Transmission of followups will normally be by the same method employed for submission of requisitions.

(d) When used as a followup and when no status has been received from the supply source, the following entries shall be punched in the DD Form 1348m:

Card Columns	*Data*	*Explanation and Instructions*
1–3	Document identifier.	Enter the code AF1 or AF2, as applicable to a followup.
4–66	All other fields of data.	Duplicate entries from the original requisition.
67–71	Blank.	Leave blank.
72	Management code.	Enter management code from original requisition; otherwise leave blank.
73–80	Other fields of data.	Leave blank.

(e) When used as a followup and when status has been received from a supply source, the following entries shall be punched in the DD Form 1348m:

Card Columns	*Data*	*Explanation and Instructions*
1–3	Document identifier.	Enter the code AF1 or AF2 as applicable to a followup.
4–6	Routing identifier.	Enter code identifying the last known supply source indicated on the supply status card in columns 67–69.
7–80	All other fields of data.	Duplicate the entries from the last status card received.

H–303.3 *Use of DD Form 1348m as a Cancellation.*

(a) A cancellation, in whole or in part, shall be initiated only by the requisitioner or the supplementary addressee. Transmission of cancellation will normally be by the same method employed for submission of requisitions.

(b) Preparation of the DD Form 1348m for use as a cancellation shall be as follows:

Card Columns	Field/Legend	Explanation and Instructions
1-3	Document identifier.	Enter code AC1 or AC2, as applicable to a cancellation.
4-6	Routing identifier.	Enter code for last known source of supply.
7	Media and status.	Enter code shown on requisition.
8-22	Stock number ..	Enter stock or part number as shown on requisition or on supply status card when such status has been received.
23-24	Unit of issue ---	Enter unit of issue as shown on requisition or status card.
25-29	Quantity -------	Enter quantity for which cancellation is requested.
30-43	Document number.	Enter the document number of the requisition for which cancellation is requested.
44	Suffix or demand.	Enter suffix code as shown in supply status card when applicable; otherwise, enter demand code from requisition.
45-80	All other fields.	The data in the requisition (columns 45-66 and 72) or supply status card (columns 45-80) shall be included in the cancellation.

(c) Cancellation requests shall not be submitted for requisitioned materiel destined for CONUS contractor activities after receipt of shipment status information advising that shipment has occurred.

(d) Cancellation requests shall not be submitted for requisitioned materiel destined for overseas contractor activities after receipt of shipment status or lift information advising that:

(i) the materiel has been shipped by air or parcel post,
(ii) the total value of the materiel is less than $200,
(iii) the materiel has been lifted from a CONUS port, and
(iv) the materiel was shipped 45 or more days prior.

H-303.4 *Use of DD Form 1348m as a Requisition Modifier.* See H-307.

H-304 Preparation and Use of Messages.

H-304.1 *General.* Requisitions, followups, and cancellations may be transmitted by messages when time is of the essence and other means are not considered appropriate.

H-304.2 *Limitations.* When messages are used for any of the foregoing purposes, each transmission shall be limited to a maximum of seven transactions. When explanatory comments are required, the appropriate entry shall be entered on the line immediately following each transaction. All transactions on a single message must be intended for the same elements within the recipient processing point; *i.e.*, the routing identifier codes must be identical on all transactions.

H-304.3 *Use of Messages as Requisitions.* The first line in the body of the message shall contain the words "MILSTRIP Requisition(s)". Thereafter, each transaction shall be numbered commencing with number 1 and the first 66 columns of data, except that dividing slashes (/) shall be inserted, and divided ex-

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actly as shown in H-202.4. Each transaction shall consist of 18 separate field lengths of data.

H-304.4 *Use of Messages as Cancellations, Followups and Requisition Modifiers.* Cancellations, followups and requisition modifiers by message shall be in the same format as that shown for a sample requisition, except that the first line in the body of the message shall be shown as "MILSTRIP Cancellation(s)," "MILSTRIP Followup(s)" or "MILSTRIP Requisition Modifier(s)", as appropriate. Data shown on cancellations and followups, except the first element of data which will show the correct document identifier, shall be a repeat of the original requisition. An entry in a requisition modifier document may differ from that in the original requisition only to reflect an increase or decrease in the Priority Designator or Required Delivery Date. When the priority of an item ordered changes but the quantity required is different from the quantity previously requisitioned, a new requisition shall be submitted for the quantity required under the new priority.

H-304.5 *Confirmation Copies.* When requisitions are relayed by electrical message, confirmation copies are not required by the supply source and shall not be forwarded. and shall not be forwarded.

H-305 Telephone and Radio Requisitions.

H-305.1 *General.* Under exceptional circumstances when other methods of transmission are not adequate, requisitions may be submitted by telephone or radio. When considered necessary, requisitions will be prepared on DD Form 1348 or DD Form 1348m, as appropriate, and read to the supply source by telephone or radio in exact columnar alignment.

H-305.2 *Confirmation Copies.* When requisitions are relayed by telephone or radio, confirmation copies are not required by the supply source and shall not be forwarded.

H-306 Formats for Status, Replies to Followups, and Replies to Cancellation Requests. The formats used by military processing elements (*i.e.*, depots, inventory control points, inventory managers, etc.) in furnishing status and in replying to followups and cancellation requests are as follows:

(i) exception status, see H-611;
(ii) 100% supply status, see H-611;
(iii) shipment status, see H-612;
(iv) reply to followup, see H-613; and
(v) reply to cancellation request, see H-614.

H-307 Submission and Use of Requisition Modifier Documents.

(a) A requisition modifier document may be initiated by the requisitioner or supplementary addressee to modify previously submitted requisitions when the required dates for previously requisitioned materiel must be changed to prevent work stoppage at industrial/production activities engaged in repair, modification or manufacture of primary weapons, equipment and supplies.

(b) The activity initiating a requisition modifier document will be responsible for furnishing notification of such action to other interested activities, such as the requisitioner, and the supplementary addressee. The requisition modifier document will be transmitted to the last known source of supply.

(c) The requisition modifier document will be prepared by originating activities completing all prescribed data element entries for requisitions. An entry in a requisition modifier document may differ from that in the original requisition only to reflect an upgrading or downgrading in the Priority Designator or Required Delivery Date. When the priority of an item changes, but the quantity required is different than the quantity previously requisitioned, a new requisition will be submitted for the quantity required under the new priority.

(d) Supply sources will process requisition modifier documents to provide for modification of requisitions on back-order or modification of requisitions for which materiel release orders or DD Forms 1348-1 have not been processed to storage activities. Requisitions which have been submitted to procurement sources for direct delivery of required items at the time of receipt of requisition modifier documents are not required to be modified. These requisitions will be considered as requisitions for which materiel release orders or DD Forms 1348-1 have been processed at the time of receipt of requisition modifier documents. When requisition modifier documents are processed, the original requisitions identified by document numbers of the modifier documents, will be suspended from processing. Should the original requisitions be held on back-order, upon receipt of the requisition modifier document, the priority designators and/or required delivery dates will be amended in accordance with the requisition modifier documents. Procurement sources will be advised of the priority designator and/or required delivery date amendments. Modification of materiel release orders or DD Forms 1348-1 is at the discretion of the Military Services and Agencies. Supply sources will furnish requiring activities with the latest supply or shipment status information when modification of materiel release orders or DD Forms 1348-1 will not be accomplished. In those instances where the Services or Agencies elect to modify materiel release orders or DD Forms 1348-1, a materiel release order or DD Form 1348-1 modifier document will be prepared and transmitted to the applicable storage activity. The materiel release order or DD Form 1348-1 modifier documents will be prepared as a result of processing requisition modifier documents as new requisitions.

(e) Storage activities, upon receipt of materiel release orders or DD Form 1348-1 modifier documents, will cancel the original materiel release order or DD Form 1348-1. Identification of these latter documents will be accomplished by matching the document numbers of modifier documents with document numbers of materiel release orders or DD Forms 1348-1 having been previously received. The modifier documents will be processed in the normal manner prescribed for materiel release orders or DD Forms 1348-1.

(f) In those instances where requisition modifiers or materiel release order modifiers are received at requisitioning processing points and storage activities and cancellation action cannot be taken against the original requisition or MRO, due to no record of the requisition / MRO, the following actions will be taken:

- (i) Requisition processing points will process the requisition modifier document as a new requisition.
- (ii) Storage activities will process the materiel release order modifier document as a new materiel release order.

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(g) When storage activities receive materiel release order or DD Form 1348-1 modifier documents and shipment action applicable to the original materiel release order or DD Form 1348-1 has been accomplished, no action will be taken relative to the modifier document.

(h) Document Identifier Codes to be used on requisition modifier documents are listed in H-602.2.

H-308 Submission and Use of Followup (Request for Improved ESD).

(a) A followup requesting improvement of Estimated Shipping Dates (ESDs) contained in previously furnished supply status documents may be initiated by prime contractors. These follow-up inquiries will contain Document Identifier Code AFC in card columns 1-3 and the data from the previously received supply status document in card columns 4-66. The AFC documents will be prepared only for transactions applicable to Priority Designators 01-08. The necessity for such inquiries will generally result from such conditions which necessitate receipt of materiel prior to expiration of certain dates.

(b) When determination is made that improvement in ESDs can be accomplished, supply status documents, containing the revised ESD in columns 62-64, will be transmitted to status recipients designated in the original requisitions. When actions taken by management do not result in improved ESDs, status recipients designated in the original requisitions will be provided the latest status applicable to the requisitions concerned with the requests for ESD improvement.

H-309 Submission and Use of Followup on Cancellation Request Document.

(a) A followup to obtain the status on a previously submitted cancellation request may be submitted by the requisitioner or the supplementary addressee. The followup will be processed as a cancellation request by the supply source provided that the original cancellation request was not received.

(b) The followup on a cancellation request will be prepared by originating activities completing all prescribed data elements for cancellation requests. (See H-302.4 and H-303.3.) Document Identifier AK1 or AK2, as appropriate, will be entered in Block 1 or Card Columns 1 through 3. Followups on cancellation requests will be transmitted to the last known source of supply.

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Part 4—Release/Receipt Documentation

H-400 Scope of Part. This Part sets forth instructions for the preparation and use of the MILSTRIP documentation prepared by the military supply activity to accompany Government-furnished material to contractors.

H-401 General. All contractor receipts of Government-furnished material under MILSTRIP will be accompanied by a Release/Receipt Document (DD 1348-1) (see H-202.3) prepared by the military supply activity regardless of whether shipment is in response to a contractor's requisition or is the result of action by a military supply activity. The military supply activity will supply a minimum of three copies of DD Form 1348-1 with the material. Additionally, if an advance copy of a bill of lading is received, a copy of the DD Form 1348-1 will be attached.

H-402 Responsibilities. On Military Department originated requisitions for Government-furnished material, it is the responsibility of the originating Military Department to insure that the contractor is furnished a cross reference between the requisition document and the contract number. The requisition will be treated as a supply directive and the originating Military Department will provide the contractor the required cross reference by:

(i) insuring that the contract number appears on the documentation accompanying the shipment, *i.e.*, on the DD Form 1348-1; or

(ii) furnishing the contractor "supply directive memoranda" cross referencing the requisition document number to the applicable contract number.

H-403 Exceptions in Preparation. Release/Receipt Document (DD Form 1348-1) resulting from Materiel Release Orders prepared by DSA activities will perpetuate requisition submission time in columns 21 and 22 of the document.

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H-404 Data Entries.

H-404.1 *Minimum Data Entries*. The minimum data entries shown on the DD Form 1348-1 shall be as follows:

Columns	*Item*	*Identification or Source of Data*
1-3	Document identifier.	Identifies the source document used to prepare DD Form 1348-1.
4-6	Routing identifier.	The routing identifier of the shipping activity.
7	Media and status code.	The code originally assigned to the requisition document.
8-22	Stock or part number.	The stock or part number of the item shipped. (See H-403.)
23-24	Unit of issue	The unit of issue of the stock or part number being shipped.
25-29	Quantity	The quantity being shipped.
30-43	Document number.	The document number originally assigned to the requisition.
44	Suffix	Blank, if the document represents shipment of the total quantity requisitioned; otherwise an appropriate character is assigned to indicate a partial quantity shipped.
45-50	Supplementary address.	The code as shown on the original requisition.
51	Signal	
52-53	Fund code	
54-56	Distribution	
57-59	Project code	
60-61	Priority code	
62-64	Required delivery date.	The Julian day calendar date assigned to the original requisition or other source document.
67-69	Routing identifier code.	The routing identifier code (if any) appearing in columns 67-69 of the source document. Identifies the activity directing release of the material.
70-73	Management codes.	Distribution system management codes as prescribed by the contracting Military Department or Agency. See H-615.
74-80	Unit price	The unit price of the item being released.

H-404.2 Other Data. In order to accommodate the various distribution systems and equipment, DD Form 1348-1 provides blocks for entry of other data. The use of these blocks with the exception of block 5 is optional; but, when used, they shall contain the following:

Block	Data Which May Be Entered
A	The shipping point identified by name and/or code.
B	The consignee by name and address and/or code listed in DoD Activity Address Directory.
C	Repeat of data entered in the supplementary address field (columns 45-50).
D	The project and/or code, if any.
E	The extended value of the transaction.
F	The location from which materiel is to be selected.
G	Coded cargo data.
H	The number of issue units in a package.
I	The unit weight applicable to the unit of issue.
J	The unit cube applicable to the unit of issue.
K	Uniform freight classification.
L	National motor freight classification.
M	Percentage of first class.
N	For internal use.
O	Date of document preparation.
P	Materiel condition code.
Q	For service use.
R	For internal use.
S	For internal use.
T	Stock or part number of item originally requested, if other than item released.
U	Freight classification nomenclature.
V	For internal use.
W	For internal use.
X	Item nomenclature.
Y	For internal use.
1-4	Shipper and receivers use.
5	Block 5 of DD Forms 1348-1 will reflect the shipping container number and the total number of containers in a shipment under the rules contained in paragraph 5.3.4 of MIL-STD 129D. The shipping container number(s) will indicate the specific container(s) in which the item reflected on a DD Form 1348-1 is packed. EXAMPLE: 7 / 12; container number 7 of a 12 container shipment. When an item is shipped in more than one container of a shipment, the container numbers and number of containers will be entered in block 5 as: 3, 5, 7 / 12; container 3, 5 and 7 of a 12 container shipment.
6-10	Shipper and receivers use.

Block	Data Which May Be Entered
AA-FF	Provided for any special notes or instructions deemed appropriate.
GG	Provided for any special notes or instructions deemed appropriate. For Air Force Government-furnished material, the Expendability-Recoverability-Repair Code (ERRC) shall be entered in block GG by the shipping activity.
11-15	Self-explanatory.

H-405 Document Distribution. Distribution of the individual copies of DoD Single Line Item Release/Receipt Document (DD Form 1348-1) shall be as follows:

(i) copy 1 is retained by the distribution point (shipper);
(ii) copies 2 and 3—to consignee with material;
(iii) copy 4—to consignee attached to outside of No. 1 shipping container after use for picking, packing and item identification;
(iv) copy 5*—to consignee with advance copy of the bill of lading;
(v) copy 6—transportation copy retained by the distribution point (shipper).

*When shipment is accomplished by a method not requiring backup documentation to a movement document (*i.e.*, parcel post, Government truck, etc.), this copy will be destroyed by the shipping point.

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Part 5—Return of Government-Furnished Material (GFM)

H-500 Scope of Part. This Part sets forth instructions for the preparation and use of the MILSTRIP document for the return of Government-furnished material.

H-501 General.

(a) Shipping Document for GFM Turn-In (DD Form 1483) is authorized for use by a contractor in returning Government-furnished material to the cognizant Military Department.

(b) Serviceable and unserviceable turn-ins shall be documented separately. The type of turn-in shall be indicated by the insertion of an "X" in the "Serviceable" or "Unserviceable" box on the form, as appropriate.

(c) Department of Defense forms, other than the DD Form 1483, used for turn-in shall contain as a minimum the data prescribed in H-502.

H-502 Preparation of DD Form 1483. The following entries on DD Form 1483 are required:

Field/Legend	*Card Columns or Blocks*	*Explanation and Instructions*
Contract number	A	Enter full contract number.
Ship to	B	Enter name and address of storage activity or depot designated by the contracting officer to receive the Government-furnished material.
Mark for	C	As directed by the contracting officer.
Ship from	D	Enter name and address of shipping contractor as listed in DOD Activity Address Directory.
Office administering contract.	E	Enter name and address of activity administering the contract.
Document identifier.	1-3	Leave blank.
Routing identifier (Stock control activity or inventory control point).	4-6	Leave blank.
———	7	Leave blank.
Document number (Basic).	30-39	See H-604.
Service code	30	Enter procuring service code (see H-601).
Shipper	31-35	Enter activity address code of contractor from DOD Activity Address Directory.
Date	36-39	Enter last digit of calendar year followed by Julian day calendar date on which document prepared. See H-609.
	44	Leave blank.
	45-50	Leave blank.
	51	For Army Contractors Only: Enter signal code in accordance with H-606.3. For All Other Contractors: Leave blank.

Field/Legend	*Card Columns or Blocks*	*Explanation and Instructions*
Fund	52–53	For Army Contractors Only: Enter fund code in accordance with H-606.3. For All Other Contractors: As directed by contracting officer.
	54–56	Leave blank.
Project	57–59	As directed by contracting officer.
Priority	60–61	As directed by contracting officer.
Date received	62-64	Leave blank.
	65–66	Leave blank.
Routing identifier (Storage activity or depot).	67-71	Leave blank.
Management Code	72	Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. See H-615.
	73	Leave blank.
	74–80	Leave blank.
Stock number	8–22	Enter stock number in accordance with H-603.1 through H-603.4.
Unit of issue	23–24	Enter appropriate unit of issue as indicated on document on which originally received.
Quantity shipped	F	Enter quantity shipped.
Quantity received	25–29	Leave blank.
Serial number*	40–43	For Air Force Contractors Only. Enter serial number in sequence from the block allocated by the property administrator. The serial number shall not be duplicated on any one day. For All Other Contractors. Enter serial number beginning with 0001 each day and continue in numerical sequence. The serial number shall not be duplicated on any one day.
Unit price	G	As directed by contracting officer.
Condition	H	Leave blank.
Remarks	I	Enter, as applicable, manufacturers' code and part number, item description or publication reference, stock number over 16 digits as described in H-603.3(c) and (d) and H-603.4.

*Serial number in combination with document number (Basic), columns 30–39, forms complete document number for each line item.

H-502

Field/Legend	*Card Columns or Blocks*	*Explanation and Instructions*
Date shipped	J	Enter date released to carrier.
Mode of shipment	K	Enter appropriate code from H-610.
Carrier	L	Enter name of carrier.
Bill of lading number.	M	Enter bill of lading number, if shipped by commercial carrier. Enter transportation control number if shipped by military truck, LOGAIR, or QUICKTRANS.
Number of containers.	N	Enter total number of containers.
Recap of shipment.	O	For use of shipping contractor as required.
Receipt	P	Leave blank.

H-503 Distribution of DD Form 1483. Distribution of the individual copies of DD Form 1483 shall be as follows:

(i) copies 1, 2, and 3—to the activity designated in block B, Ship To, with the material;

(ii) copy 4*—to the activity designated in block B, Ship To, with advance copy of bill of lading;

(iii) copies 5 and 6—to the activity entered in block E, Office Administering Contract (however, when the activity in block E is a Defense Contract Administration Services Region, copies 5 and 6 will be destroyed by the shipping point);

(iv) copy 7—packing list; and

(v) other copies—as required for internal use by shipping contractor.

*When shipment is accomplished by a method not requiring backup documentation to a movement (*i.e.*, parcel post, Government truck, etc.), copy 4 may be retained by shipping contractor.

H-504 Continuation Sheets. When continuation sheets are necessary, the following minimum entries are required on the second and all succeeding pages of DD Form 1483:

(i) block A—Contract Number,

(ii) page of pages,

(iii) block D—Ship From,

(iv) block B—Ship To,

(v) block C—Mark For (if applicable), and

(vi) block E—Office Administering Contract.

H-505 Reproduction of DD Form 1483. Contractors are authorized to use ditto, hectograph, multilith, or other reproduction processes in documenting turn-ins of Government-furnished material.

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MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Part 6—Codes and Other Data

H-600 Scope of Part. This Part sets forth the codes and other miscellaneous data and instructions for their use by contractors in the preparation and interpretation of MILSTRIP documents.

H-601 Service Assignment Codes (*Blocks 9 and 14—Manual*) (*Columns 30 and 45—Mechanical*). Service assignment codes are designed to accommodate service identity and use of specific fields or columns without duplication by other services. Service assignment codes are as follows:

Code	*Column Use* *30*	 *45*	*Service*
C	X	X	Army (For Contractor Use Only).
Q	X	X	Navy (For Contractor Use Only) (Contractors not listed in DoDAAD).
L	X	X	Marine Corps (For Contractors Use Only).
E	X	X	Air Force (For Contractors Use Only).
U	X	X	Defense Supply Center (For Contractor Use Only).
N	X	X	Navy (For Contractor Use) (Contractors listed in DoDAAD).

H-602 Document Identifier Codes (*Block 1—Manual*) (*Columns 1, 2, and 3—Mechanical*)

H-602.1 *General.* The document identifier code provides a means of identifying a given product (*i.e.*, requisition, cancellation, followup, supply status, etc.) to the system to which it pertains and further identifies such data as to its intended purpose and usage. This code will furnish personnel with the ability to recognize the data and thence to perform the operation dictated. When used in conjunction with electronic computers, it will enable the equipment to select the appropriate programs and mechanically assimilate and/or react to the data.

H-602.2 *Entry.* The document identifier is a mandatory entry on all requisitions and related products entering the supply distribution systems under MILSTRIP. Document identifier codes are as follows:

Columns *1 2 3*		
A01	Requisition.	For overseas shipment with National Stock Number (NSN)/NATO Stock No.
A02	Requisition.	For overseas shipment with Part Number.
A04	Requisition.	For overseas shipment with other.**
A05*	Requisition.	For overseas shipment with exception data.
A0A	Requisition.	For domestic shipment with NSN /NATO Stock No.
A0B	Requisition.	For domestic shipment with Part Number.
A0D	Requisition.	For domestic shipment with other.**
A0E*	Requisition.	For domestic shipment with exception data.
AC1	Cancellation.	By requisitioner (cols 30–35).
AC2	Cancellation.	By supplementary addressee (cols 45–50).
AF1	Followup.	By requisitioner (cols 30–35).
AF2	Followup.	By supplementary addressee (cols 45–50).
AFC	Followup (Request for Improved ESD).	Furnished by prime contractors as requests to supply sources to initiate actions which will improve estimated shipping dates provided in supply status transactions.

(*See footnotes on following page*)

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Document Identifier Codes — Continued

Columns 1 2 3		
AE1	Supply status.	For requisitioner (cols 30–35).
AE2	Supply status.	For supplementary addressee (cols 45–50).
AS1	Shipment status.	For requisitioner (cols 30–35).
AS2	Shipment status.	For supplementary addressee (cols 45–50).
AK1	Followup on Cancellation Request.	By requisitioner (cols 30–35).
AK2	Followup on Cancellation Request.	By supplementary addressee (cols 45–50).
AM1	Requisition modifier.	For overseas shipment/with NSN/ NATO Stock No.
AM2	Requisition modifier.	For overseas shipment/with Part Number.
AM4	Requisition modifier.	For overseas shipment/with other.**
AM5	Requisition modifier.	For overseas shipment/with exception data.
AMA	Requisition modifier.	For domestic shipment/with NSN/ NATO Stock No.
AMB	Requisition modifier.	For domestic shipment/with Part Number.
AMD	Requisition modifier.	For domestic shipment/with other.**
AME	Requisition modifier.	For domestic shipment/with exception data.
AU1	Reply to cancellation request—shipment status.	To requisitioner (cols 30–35).
AU2	Reply to cancellation request—shipment status.	To supplementary addressee (cols 45–50).

*Processing activity will, by screening of documents, ascertain whether requisition or passing action contains a National Stock Number or other Part Number or NATO Stock Number. If data can be acted upon without need for further passing actions, the digit in column 3 shall be changed to correspond with correct National Stock Number, Part Number or NATO Stock Number.

**For use when requisition or related document contains other than a National Stock Number, Part Number, or NATO Stock Number (*i.e.*, Production Equipment Code (PEC) No., DoD Ammunition Number, etc.).

H-603 Stock Number Entries (Rules for Entry).

H-603.1 *National Stock Number.*

(a) When an 11-digit National Stock Number is applicable:

(i) the Federal Supply Class (FSC) shall be entered in columns 8 through 11 (block 4—Manual), and

(ii) the National Item Identification Number (NIIN) shall be entered in columns 12 through 20 (block 5—Manual).

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
8	3	2	0	0	0	1	2	3	1	2	3	4			

Blank

Military Departments cognizance symbols, stratification codes, fraction symbols, condition codes, etc., are never to be entered in columns 8 through 18.

(b) When codes are required in addition to the National Stock Number to properly identify the item and these codes are recognizable to the initial processing inventory manager or depot, the codes shall be entered in columns 21 through 22. If less than two digits, entry shall be made in column 21 (block 6—Manual).

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
8	3	2	0	0	0	1	2	3	1	2	3	4	1		

Blank

or

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	5	6	0	0	0	1	2	3	1	2	3	4	A	B

H-603.2 *NATO Stock Number.* When a 13-digit NATO Stock Number is applicable:

(i) the NATO Supply Class (FSC) shall be entered in column 8 through 11 (block 4—Manual),

(ii) the two-digit NATO Country Code shall be entered in columns 12 and 13 (block 5—Manual), and

(iii) the seven-digit NATO Identification Number (FIIN) shall be entered in columns 14 through 20 (blocks 5 and 6—Manual).

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
5	3	4	0	0	0	1	2	3	1	2	3	4			

Blank

H-603.3 *Manufacturer's Part Number.*

(a) When a manufacturer's part number is applicable, the manufacturer's identity code (Federal Supply Code for Manufacturers, or other) shall be entered in columns 8 through 12. Entry shall commence in column 8 and progress to the right. Spaces not required shall be left blank.

(b) The manufacturer's part number, if 10 digits or less, shall be entered in columns 13 through 22 progressing from left to right, with unrequired spaces, if any, left blank.

(c) When a manufacturer's part number exceeds 10 digits, the entire manufacturer's code and part number shall be entered in the "Remarks" space and properly identified. The construction of part numbers will conform to the requirements of Federal Manual for Supply Cataloging, M1-6.

(d) If a stock number of manufacturer's part number is not known but a description or publication reference is available to adequately identify the item, and such reference is meaningful to the processing point, the Stock or Part Number Field shall be left blank and the descriptive or reference data shall be entered in the "Remarks" space.

H-603.4 *Other Numbers.* When other than a National Stock Number, part number, or NATO Stock Number is applicable (*i.e.*, a Production Equipment Code (PEC), DoD Ammunition Number, locally assigned number, etc.), the following rules apply:

(i) If 15 digits or less, it shall commence in column 8 and progress to the right, with unused spaces left blank.

Examples:

(Less than Fifteen digits)

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	2	3	4	5	6	7	8	9	1	2	3			

Blank

(Fifteen digits)

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	2	3	4	5	6	7	8	9	1	2	3	4	5	6

(ii) If 16 digits or more, the entire number shall be entered in the "Remarks" space.

H-603.5 *Additional Rules.* Column 3 of the document identifier code (see H-602) is significant to the type of number entered in columns 8 through 22, as follows:

(i) any requisition containing a National Stock Number/NATO Stock Number, irrespective of additional codes in columns 21 and 22, must have a "1" (for overseas shipment) or an "A" (for domestic shipment) entered therein unless additional data is contained in the "Remarks" space;

(ii) any requisition containing a part number must contain a "2" or "B" unless additional data is entered in the "Remarks" space;

(iii) any requisition containing a Production Equipment Code (PEC), DoD Ammunition Number, or locally assigned number, etc., must contain a "4" or "D" unless additional data is entered in the "Remarks" space.

When additional data is entered in the "Remarks" space, regardless of the content of any columns of the requisition (including columns 8 through 22), column 3 must contain a "5" or "E" and the requisition must not be transceived. When these requisitions are mailed, the envelopes will be conspicuously marked "MILSTRIP EXCEPTION DATA REQUISITIONS."

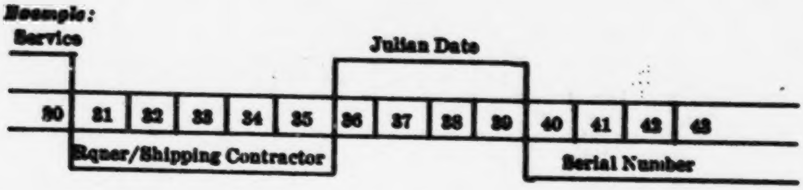
H-604 Document Number Entries.

H-604.1 *General.* These instructions for document number entries are applicable to both requisitions and turn-ins for:

(i) block 9 through 12—manual requisition (DD Form 1348), and
(ii) columns 30 through 43—mechanized requisitions (DD Form 1348m) and the Shipping Document for GFM Turn-In (DD Form 1483).

H-604.2 *Composition.* The document number is a non-duplicative number throughout the MILSTRIP system and is constructed of four basic elements as follows:

(i) service (block 9 or column 30),
(ii) requisitioner/shipping contractor (block 10 or columns 31 through 35),
(iii) Julian date (block 11 or columns 36 through 39), and
(iv) serial number (block 12 or columns 40 through 43).



H-604.3 *Entries.*

(a) The entry in block 9 or column 30 (service) always shall be the appropriate character from H-601 that indicates the service or other governmental element ownership or sponsorship.

(b) For requisitions, the entry in block 10 or columns 31 through 35 indicates the activity address code of the requisitioner. It may also indicate the intended consignee or ship to address. (See H-605). For turn-ins, the entry in columns 31 through 35 indicates the activity address code of the contractor making the turn-in. Activity address codes are published in the DoD Activity Address Directory (see H-210).

(c) Entries in block 11 or columns 36 through 39 (date) shall always be numeric and will be the date of transmittal from the requisitioning activity to the appropriate supply source as follows:

(i) column 36 shall indicate the last numeric digit of the calendar year in which the document was transmitted. For example, "5" for 1965, "6" for 1966, etc.; and

(ii) columns 37 through 39 shall indicate the numeric consecutive day of the calendar year on which the document was transmitted. For example, "063" for 4 March. (See Julian day calendar in H–609.)

(d) Entries in block 12 or columns 40 through 43 may be numeric or alphabetic characters to indicate the serial number of the document and may be assigned at the discretion of the document originator. The serial number shall not be duplicated on the same day. The use of alphabetic characters can serve to provide for block assignment by Service/Agency designated activities. The following alphabetic codes have been reserved for use in column 40 as indicated:

Code	*Explanation*
J	To identify Interservice Supply Support Procedures (ISSP) requisitions resulting from interrogation and offer procedures.
K	To identify ISSP requisitions and follow-on documents resulting from Defense Logistics Services Center (DLSC) mechanized screening procedures. Code "K" will be entered in column 40 of requisition documents prepared for materiel requirements upon receipt of offer notifications from DLSC. Code "K" will be perpetuated in all follow-on documents resulting from the requisitions processing transactions.
L	To identify requisitions and other Redistribution Documents resulting from screening DLSC excess listings, flyers, brochures, contractor excess inventory listings, Property Disposal Officer and GSA excess bulletins and other special offers of DoD potential excess and declared excess personal property. Code "L" will be entered in column 40 of requisitions and other redistribution documents prepared by ICPs, Research and Development Activities, Schools, bases, posts, camps, and stations for materiel requirements determined to be available from screening DLSC excess listings, flyers, brochures, contractor excess inventory listings, PDO and GSA excess bulletins and other special offers of DoD potential excess and declared excess personal property.
M	(Reserved for future assignment.)
N	To identify ISSP requisitions for conventional ammunition and follow-on documents resulting from DLSC mechanized screening procedures. Code "N" will be entered in Card Column 40 of

Code	*Explanation*
	requisition documents prepared for materiel requirements for conventional ammunition upon receipt of offer notification from DLSC. Code "N" will be perpetuated in all follow-on documents resulting from the requisition processing transactions.
O	Not to be used.
P	Industrial Plant Equipment requisition coded P in Card Column 40 denotes that the requisitioner intends to purchase the item if it is not supplied from IPE assets. This demand, if the item is supplied from IPE assets, denotes hard savings under the Cost Reduction subgroup area, "Reutilization of Idle Production Equipment."
Q	Industrial Plant Equipment requisition coded Q in Card Column 40 denotes that the requisitioner does not intend to purchase the item if it is not available from IPE assets. This demand, if the item is supplied from IPE assets, denotes a Cost Avoidance under the Cost Reduction subgroup area, "Reutilization of Idle Production Equipment."
U	To identify shelf-life items which are invoiced to Property Disposal Officers for utilization screening and/or disposal in accordance with DoD 4140.34—M (Defense Utilization Manual) and DoD 4160.21—M (Defense Disposal Manual).
Y	To identify Marine Corps ownership of materiel applicable to Contractor Inventory Utilization Group (CIUG) Procedures.

(e) *Air Force Transactions Only.*

(i) For requisitions in support of Air Force contracts and for turn-in of GFM or GFP, the contractor's activity address code (EY and/or EZ number) as published in DOD 4000.25-D, Department of Defense Activity Address Directory (DODAAD), shall be entered in columns 30 - 35 (blocks 9 and 10 manual) of the requisition or columns 30 - 35 of the turn-in document. DOD 4000.25-D is published quarterly in microfiche form, is distributed by DLA/LM, and is obtained through the local publication distribution office.

(ii) An EZ number shall be used when the materiel requisitioned or being turned in is applicable to a maintenance-type contract such as repair, overhaul, modification and PDM. An EY number shall be used when the materiel requisitioned or being turned in is applicable to any other type contract such as production or research and development.

(iii) The contracting activity shall request HQ AFLC/LOZMS to assign EY and/or EZ activity address codes when such codes are not included in the current DOD Activity Address Directory (DOD 4000.25-D). Requests shall indicate the specific code or codes desired and the information and data required by AFR 400-11.

(iv) The Contract Administration Office (CAO) shall advise HQ AFLC/LOZMS of all required changes to EY and EZ activity address codes (e.g., contractor name changes and mail or freight addresses). The CAO shall also promptly request rescission of EY and/or EZ activity address codes when the contractor no longer has Air Force contracts.

H-605 Signal Codes (Block 16—Manual) (Column 51—Mechanical).

H-605.1 *General.* The purpose of the signal code is two-fold in that it designates the fields containing the intended consignee (ship to) and the activity to receive and effect payment of bills, when applicable. All requisitions and documents resulting therefrom used under MILSTRIP shall contain the appropriate signal code.

H–605.2 *Coding Structure and Meaning.*

(a) When the material is to be shipped to the activity indicated in columns 30 through 35 (requisitioner), the signal code shall be as follows:

(i) code "A"—Bill to blocks 9 and 10—columns 30 through 35.
(ii) code "B"—Bill to blocks 14 and 15—columns 45 through 50.
(iii) code "C"—Bill to activity designated by block 17, column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. See H–606.
(iv) code "D"—No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

(b) When the material is to be shipped to the activity indicated in blocks 14 and 15—columns 45 through 50 (supplementary address), the signal code shall be as follows:

(i) code "J"—Bill to blocks 9 and 10—columns 30 through 35.
(ii) code "K"—Bill to blocks 14 and 15—columns 45 through 50.
(iii) code "L"—Bill to activity designated by block 17 column 52. However, if the third digit of the document identifier is "5" or "E," the Remarks block may indicate other billing information. See H–606.
(iv) code "M"—No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

H–606 Fund Codes (Block 17—Manual) (Columns 52 and 53—Mechanical).

H–606.1 *General.*

(a) The fund code is provided for the specific use of the requisitioner, when directed by the Military Department to enter a code that will indicate, to the distribution system, that funds are available to pay the charge when and where received. In addition, this fund code will be perpetuated by the distribution system in all follow-on documentation. The fund code construction is the responsibility of the appropriate Military Department.

(b) A secondary use for the fund code field has been provided when the signal code in column 51 (see H–605) is "C" or "L", to indicate the activity that is to be billed. When the signal code (column 51) is "C" or "L", the first position (column 52) of the fund code shall contain an alphabetic character which will indicate the activity to receive the bill.

(c) When the third position of the document identifier (column 3) is "5" or "E" and column 51 is "C" or "L", the information in the "Remarks" field may indicate other billing information.

(d) Requisitions submitted to Defense Supply Centers, other Departments, and the General Services Administration, shall always contain a fund code, unless the material requested has been offered without a reimbursement, in which case the signal code (column 51) will be "D" or "M" (free issue) and the fund code field shall be blank. The submission of a MILSTRIP requisition citing a fund code constitutes sufficient authority for release of materiel and subsequent billing therefor. The billing activity shall always perpetuate the fund code cited on the requisition.

(e) Intra-service requisitions (transactions other than (d) above) may or may not require entries in the fund code field dependent upon the Departmental regulations.

(f) Service use of fund code with signal code "C" or "L" in column 51 will be as follows:

(i) Air Force—in accordance with H-606.2,
(ii) Army—in accordance with H-606.3,
(iii) Navy—not applicable,
(iv) Marine Corps—not applicable, and
(v) Defense Supply Agency—not applicable.

(g) Fund code entries are required in turn-in documents for Government-furnished material prepared by Army contractors. These entries will be in accordance with H-606.3 or as directed by the contracting officer. Fund code entries are required in turn-in documents prepared by other service contractors only when specifically requested by the contracting officer. In such cases, the contracting officer will provide the fund code to be used.

H-606.2 *Air Force Entries in Fund Code (Block 17—Manual) (Columns 52 and 53—Mechanical).*

(a) Air Force contractor activities, when directed by that Department, submitting requisitions to Defense Supply Centers, other Departments, and the General Services Administration for base funded items shall enter a two-digit fund code in which the first position (column 52) shall always be a numeric. (Used with signal codes "A," "B," "J," and "K" in column 51.)

(b) Air Force contractor activities submitting requisitions to Air Force depots, when funding is not a condition of requisitioning, shall leave columns 52 and 53 blank. (Used with signal codes "D" and "M" in column 51.)

(c) Air Force inventory managers, when passing requisitions for centrally funded items to Defense Supply Centers, other Departments, and the General Services Administration shall enter a two-digit fund code in which the first position (column 52) shall always be the appropriate alphabetic character, as listed below, identifying the depot obligating the funds and to effect payment. (Used with signal codes "C" and "L" in column 51.)

Code	*Activity*
A	Acctg Disb Sta Nr 595600 ASD (ASCFA) Wright-Patterson AFB, Ohio 45433
B	Acctg Disb Sta Nr 669800 AFFTC (FTBCC) Edwards Air Force Base California 93523
C	Acctg Disb Sta Nr 678100 ESD (ESCFA) L.C. Hanscom Field Massachusetts 01731

Code	*Activity*
D	Acctg Disb Sta Nr 503900 RADC (EMLCD) Griffiss AFB New York 13440
E	Acctg Disb Sta Nr 662400 AFETR (ETBCA) Patrick AFB Florida 32925
F	Acctg Disb Sta Nr 503200 Sacramento Air Materiel Area McClellan AFB California 95652
G	Acctg Disb Sta Nr 504400 Ogden Air Materiel Area Hill AFB Utah 84401
H	Acctg Disb Sta Nr 503100 Oklahoma City Air Materiel Area Tinker AFB Oklahoma 73145
J	Acctg Disb Sta Nr 674800 AFMDC (MDBCA) Holloman AFB New Mexico 88330
K	Acctg Disb Sta Nr 503600 SAMSO Norton AFB California 92409*

*Mail and messages pertaining to Re-entry System or Minuteman only.

L	Acctg Disb Sta Nr 503300 Warner Robins Air Materiel Area Robins AFB Georgia 31093

Code	*Activity*
M	Acctg Disb Sta Nr 503400 Mobile Air Materiel Area Brookley AFB Alabama 36615
N	Acctg Disb Sta Nr 503000 Headquarters Air Force Logistics Command Wright-Patterson AFB Ohio 45433
P	Acctg Disb Sta Nr 504300 San Antonio Air Materiel Area Kelly AFB Texas 78241
R	Acctg Disb Sta Nr 662300 AFSWC (SWBCA) Kirtland AFB New Mexico 87117
S	Acctg Disb Sta Nr 667300 AEDC (AEBCA) Arnold AFB Tennessee 37389
T	Acctg Disb Sta Nr 594100 AFWTR (WTSCA) Vandenberg AFB California 93437
U	Acctg Disb Sta Nr 528500 AMD (AMSCA) Brooks AFB Texas 78235
V	Acctg Disb Sta Nr 527900 APGC (PGBCA) Eglin AFB Florida 32542
W	Acctg Disb Sta Nr 599000 Headquarters Air Force Systems Command (SCCA) Andrews AFB Maryland 20331

Code	*Activity*
Y	Acctg Disb Sta Nr 594200 SAMSO AF Unit Post Office Los Angeles, California 90045

H-606.3 *Army Entries in Fund Code (Block 17--Manual) (Columns 52 and 53--Mechanical)(Shipping Document for GFM Turn-In, DD Form 1483).*

(a) When the fund account and the Army activity that financed the acquisition of the material is known, Army contractor activities shall, unless directed otherwise by the contracting officer, enter the fund code of the financing account (as provided by the contracting officer). In addition, these activities shall enter, in columns 45 and through 50, the activity address code of the financing Army activity (as provided by the contracting officer) and, in column 51, signal code "B."

(b) When the fund account or the Army activity that financed the acquisition of the material is not known, Army contractor activities shall, unless directed otherwise by the contracting officer, enter the appropriate fund code from the matrix below. In addition, these activities shall enter, in column 51, signal code "C."

Kind of Materiel	End Item in Which Materiel is Used				
	Aircraft	Ammunition	Missiles	Weapons & Tracked Combat Vehicles	Other
Communications or electronics	GB	--	GL	GM	GU
Aviation	HB	--	HL	--	HU
Tank or automotive	--	KI	--	KM	KU
Missile	LB	LI	LL	LM	LU
Armament	MB	MI	ML	MM	MU
Other	GB	KI	LL	MM	GU

(c) When the codes in (b) above are used with signal code C or L, the first-position entry designates one of the following Army activities.

Code	*Activity*
G	Finance and Accounting Office US Army Communications and Electronics Materiel Readiness Command Fort Monmouth, NJ 07703
H	Finance and Accounting Office US Army Troop Support and Aviation Materiel Readiness Command 4300 Goodfellow Boulevard St. Louis, MO 63120
K	Finance and Accounting Office US Army Tank Automotive Materiel Readiness Command Warren, MI 48090
L	Finance and Accounting Office US Army Missile Command Redstone Arsenal, AL 35809
M	Finance and Accounting Office US Army Armament Materiel Readiness Command Rock Island, IL 61299

H-607 Advice and Status Codes (Block 22—Manual) (Columns 65 and 66—Mechanical).

H-607.1 *General.*

(a) The advice/status field is of dual use and its application and the coding structures are dependent upon the directional flow of the documents.

(b) Advice codes (see H-607.2) are numeric/alphabetic and flow from requisition originators to initial processing points and are thereafter perpetuated into passing actions and Release/Receipt documents. The purpose of advice codes is to provide coded instructions to supply sources when such data are considered essential to supply action and entry in narrative form is not feasible.

(c) Status codes (see H-607.3) are alphabetic/alphabetic and alphabetic/numeric and flow from supply sources to requisitioners or consignees and inform recipients of the status of requisitions.

H-607.2 *Advice Codes—Numeric/Alphabetic (From Requisitioner to Initial Processing Point).*

(a) *General Codes.*

BEST DOCUMENT AVAILABLE

Columns 65	66	
2	A	Item is not locally obtainable through manufacture, fabrication, or procurement.
2	B	Requested item only will suffice. Do not substitute/interchange. Also applies to "obsolete" items previously rejected with Status Code CJ.
2	C	Do not back-order. Reject unfilled quantity not available to meet Standard Delivery Date/Required Delivery Date. Suitable substitute acceptable.
2	D	Furnish exact quantity requested (*i.e.*, do not adjust to unit pack quantity).
2	J	Do not substitute or back-order any unfilled quantities.
2*	L	Quantity reflected in quantity field exceeds normal demands; however, this is a confirmed valid requirement.
2	N	Item required in one continuous length as expressed in cc 25-29 and Unit of Issue in cc 23-24.
2	T	Deliver to the ultimate consignee by the SDD or RDD entered hereon or cancel requirement.

*Requisitioners desiring to advise the supply source that the quantity requested exceeds the requisitioner's normal demand, will enter Advice Code 2L in block 22 or columns 65 and 66 of requisitions.

(b) *Air Force Transactions Only.*

Columns		
65	66	
6	A	Request for shipment of Reparable Materiel, FILL or KILL.
6	B	Request for shipment of TOC Materiel. FILL or KILL.

H-607.3 *Status Codes* — **Alphabetic/Alphabetic and Alphabetic/Numeric (From Processing Point to Authorized Activity).**

(a) *Supply Status.* Supply status (except "rejection" status, code "C") predicts shipment on time as specified by the standard delivery date or the required delivery date unless specific supply status is received advising of an anticipated delay or an estimated shipping date. Latest status can be determined by "transactions dates" entered in columns 71 through 73. Supply status codes are as follows:

Columns		
65	66	
B	A	Item being processed for release and shipment.
B	B	Item backordered. The estimated shipping date is entered in columns 70 through 73.
B	C	Item on original requisition containing this document number has been backorderd. Long delay is anticipated and estimated shipping date is in columns 70–73. Item in stock number field (or "Remarks" field if stock number field cannot accommodate the item number) can be furnished as a substitute. The price for the substitute item is in columns 74–80. If desired, submit cancellation of original requisition and requisition the offered substitute.
B	D	Suspended. Action on this requisition is being delayed due to need to verify requirement relative to authorized application, item identification or technical data. Upon completion of review, additional status will be provided to indicate action taken.
B	F	No record of your document for which your Document Identifier AF followup or cancellation request submitted. For requisitioners, if appropriate, deobligate funds and if item is still required, submit requisition using new document number.
B	G	Stock number changed or stock number not assigned to part number submitted. Examine also unit of issue and quantity field for possible changes.
B	H	Substitute / interchangeable item being supplied. See substitute / interchanged stock or part number in stock number field. Examine unit of issue and quantity fields for possible changes.
B	J	Unit of issue and/or quantity changed.
B	K	Your document erroneously addressed and has been rerouted. Forward subsequent followups or cancellation requests to activity indicated in columns 67–69.
B	M	Requisition referred to activity indicated in columns 67 through 69. Forward all future transactions to that activity.
B	N	Requisition being processed as free issue. Signal and fund code fields corrected as noted. Adjust local fund obligation records.
B	P	Item is on backorder or procurement for direct delivery. Shipping action will be delayed. Revised estimated shipping date is CC 70–73.
B	Q	Canceled. Results from receipt of cancellation request from requisitioner, consignee, manager, or other authorized activity. Also applies to cancellations resulting from deletion of an activity from the DoDAAD.
B	V	Item being procured for direct shipment to consignee. The estimated shipping date is entered in columns 70 through 73.
B	6	The materiel applicable to the requisition requested for cancellation has been diverted to an alternate consignee.

B	7	Unit price change. The latest unit price for the item, identified by the stock or part number in columns 8–22, is reflected in columns 74–80.
B	8	Quantity requested for cancellation not accomplished.
B	9	The activity identified by the code in columns 4–6 is in receipt of your cancellation request. Action to cancel the demand or to divert the applicable shipment is being attempted. Do not deobligate funds or delete due-in. Advice of final action will be furnished in subsequent status transactions.

(b) *Rejection Codes*. All inter-service rejections shall contain "C" in column 65 followed by an alphabetic or numeric character in column 66 which shall furnish the appropriate "reason for rejection". Items rejected, if still required, shall be rerequisitioned using new document numbers. To preclude similar rejection, the requisitioner shall consider the reason for the previous rejection and correct or adequately elaborate on the new requisition. Rejection codes are as follows:

Columns 65	66	
C	A	Rejected. (1) Explanation for rejection is stated in the Remarks field (continued on reverse side of card as necessary). In this case, the status card will be mailed, not transceived. This code will not be used when other status codes have been established to convey a specific condition. (2) When due to security reasons, or space limitation, explanation for rejection will be furnished by separate media referring to pertinent document numbers. In this case, the Remarks block will be left blank and CA status cards may be transceived.
C	B	Rejected. Initial requisition requested rejection of that quantity not available for immediate release or not available by the SDD or RDD. Quantity field indicates quantity not filled. This code is specifically applicable in responding to Advice Codes 2C, 2J and 2T.
C	D	Rejected. Unable to process because of errors in the quantity, date, serial number and/or signal code fields.
C	F	Rejected. This requisition is an exact duplicate of a previously received requisition presently in process.
C	G	Rejected. Unable to identify requested item. Rerequisition and furnish correct National Stock Number or part number (including reference to appropriate publication or drawing), or end-item identification and item manager, if known.
C	H	Rejected. Requisition submitted to incorrect single-manager / inventory manager / technical service / distribution depot / or GSA. Research for correct source and submit new requisition. .
C	J	Rejected. Item coded (or being coded) "obsolete" in latest stock lists / catalogs and not available for issue.
C	K	Rejected. Item not available. Returned for supply by local issue of next higher assembly, component or kit, or submit requisition for next higher assembly.
C	L	Rejected. Item not available. Requisition component parts if practicable.
C	M	Rejected. Fund obligation not cited and/or item is not or no longer free issue. If still required, submit new requisition with appropriate fund code other than D or M.
C	N	Rejected. Source of supply is local manufacturer or fabrication.
C	P	Rejected. Source of supply is local procurement. If not available locally, submit a new requisition with Advice Code 2A citing appropriate funds.
C	Q	Rejected. Item requested is command or Department regulated or controlled. Requisition through appropriate channels.
C	S	Rejected. Quantity requisitioned is suspect of error or indicates excessive quantity. Partial quantity being supplied. Quantity field in this transaction reflects quantity rejected. If requirement still exists, submit a new requisition for the required quantity using Advice Code 2L.

C	T	Rejected. Item / NSN cited in the requisition needs further clarification. Submit new requisition using DD Form 1348–6 and citing all prescribed data available on the requisitioned item, *i.e.*, FSCM, part number, model, series, serial number, publication reference, item usage.
C	U	Rejected. Item requested is procured only in a repair kit. Requisition appropriate kit.
C	V	Rejected. Item prematurely requisitioned. The effective date for requisitioning is contained in Card Columns 70–73.
C	W	Rejected. Item not available. Local procurement is authorized for this requisition only. If item cannot be locally procured, submit new requisition using Advice Code 2A.
C	X	Rejected. Unable to identify the "bill to" and/or "ship to" address as designated by the signal code.
C	Y	Rejected. Item coded "Inactivated" and requires procurement action. Item in stock number field can be furnished as a substitute. Unit price of substitute item is in cc 74–80. If desired, submit new requisition. If only original (inactivated) item will suffice, submit new requisition with Advice Code 2B.
C	Z	Rejected. Item not available for resale. Reserved for troop issue only.
C	1	Rejected. (1) Item requisitioned on MILSTRIP is excluded from provisions of the MILSTRIP Manual. Rerequisition using prescribed format. (2) Other MILSTRIP documents submitted for items excluded from provisions of the MILSTRIP manual.
C	7	Rejected. Requisition contains DI Code A05/A0E but does not contain remarks/exception data.

(c) *Air Force Transactions Only.*

Columns 65	66	
F	A	Obligation authority for base procurement (used to indicate that the requisitioning activity is authorized to make local procurement of items for which Air Force Logistics Command has procurement responsibility). Central procurement funds will be made available to the requisitioning activity on an obligation authority. Not applicable from CONUS to overseas activities.
F	B	Back order canceled. Report of serviceable excess received for item currently on back order.
F	C	Passing action (materiel release order or redistribution order) issued over 60 days ago. Air Materiel Area followup action has not resulted in shipment confirmation or denial. If item is still required, requisition using new document number.
F	D	Rejected. Contractor's requisitioning authorization has been totally suspended or suspended for the specific contract number cited on the requisitioning document. To be used when the dollar requisitioning authorization on a specific contract or contracts has been or is about to be exceeded. Excludes valid, Not Operationally Ready Supply (NORS) requisitions from contractors.
F	E	Rejected. Contractor's requisition (EZ in columns 30–31) containing "R" in column 53 (fund code) does not contain contract number identification or valid "EZ" stock record account number other than the requisitioner in the supplemental address field (columns 45–50); or does not contain valid AMA code in column 52; or, does not contain signal code "C" or "L" in column 51. Rerequisition using new document number, and citing valid data in columns 45–50, and columns 51–53.

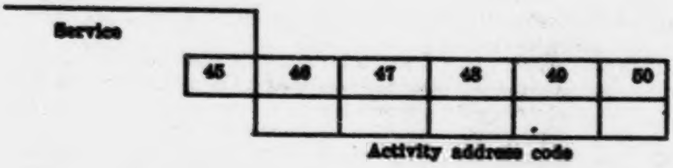
H-608 Supplementary Address Entries *(Blocks 14 and 15—Manual) (Columns 45 through 50—Mechanical).*

H-608.1 *General.* The supplementary address is a two-part field to indicate:

(i) service (block 14 or column 45), and

(ii) activity address code (block 15 or columns 46 through 50).

Example:



H-608.2 *Entries.*

(a) The entry in block 14 or column 45 (service) shall always be the appropriate character from H-601 that indicates the service or other Government element ownership or sponsorship. Specific alphabetic characters are prescribed for normal requisitioning and shipping and for contractor's use.

(b) Entries in block 15 or columns 46 through 50 indicate the specific activity address code for the purpose of receiving material or receiving documentation. The activity address code will be established and disseminated in the DoD Activity Address Directory. Each activity address code so established will contain the address(es) in detail to permit shipping of material, billing for material, and mailing of documentation.

(c) When the originator of the document desires to utilize block 15 or columns 46 through 50 for other data, the entry will not be significant to other than the originator. In these cases, an alpha "Y" shall be entered in column 45. The alpha "Y" indicates that the contents of the field (block 15 or columns 46 through 50) are not significant to the MILSTRIP system and shall not be disseminated, but will be perpetuated and shown on subsequent document generated therefrom.

H-609 Julian Day Calendar.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	1	32	60	91	121	152	182	213	244	274	305	335
2	2	33	61	92	122	153	183	214	245	275	306	336
3	3	34	62	93	123	154	184	215	245	276	307	337
4	4	35	63	94	124	155	185	216	247	277	308	338
5	5	36	64	95	125	156	186	217	248	278	309	339
6	6	37	65	96	126	157	187	218	249	279	310	340
7	7	38	66	97	127	158	188	219	250	280	311	341
8	8	39	67	98	128	159	189	220	251	281	312	342
9	9	40	68	99	129	160	190	221	252	282	313	343
10	10	41	69	100	130	161	191	222	253	283	314	344
11	11	42	70	101	131	162	192	223	254	284	315	345
12	12	43	71	102	132	163	193	224	255	285	316	346
13	13	44	72	103	133	164	194	225	256	286	317	347
14	14	45	73	104	134	165	195	226	257	287	318	348
15	15	46	74	105	135	166	196	227	258	288	319	349
16	16	47	75	106	136	167	197	228	259	289	320	350
17	17	48	76	107	137	168	198	229	260	290	321	351
18	18	49	77	108	138	169	199	230	261	291	322	352
19	19	50	78	109	139	170	200	231	262	292	323	353
20	20	51	79	110	140	171	201	232	263	293	324	354
21	21	52	80	111	141	172	202	233	264	294	325	355
22	22	53	81	112	142	173	203	234	265	295	326	356
23	23	54	82	113	143	174	204	235	266	296	327	357
24	24	55	83	114	144	175	205	236	267	297	328	358
25	25	56	84	115	145	176	206	237	268	298	329	359
26	26	57	85	116	146	177	207	238	269	299	330	360
27	27	58	86	117	147	178	208	239	270	300	331	361
28	28	59	87	118	148	179	209	240	271	301	332	362
29	29		88	119	149	180	210	241	272	302	333	363
30	30		89	120	150	181	211	242	273	303	334	364
31	31		90		151		212	243		304		365

For leap year, add one to each date after 28 February.

H-610 Mode of Shipment Codes.

Code	*Description*
A	Motor, truckload.
B	Motor, less truckload.
C	Van (unpacked, uncrated personal and/or Government property).
D	Driveaway, truckaway, towaway.
E	Busline.
F	Military Airlift Command (MAC).
G	Surface, parcel post.
H	Air, parcel post.
I	Government truck, including common service.
J	REA express.
K	Rail, carload.
L	Rail, less carload.
M	Freight forwarder.
N	LOGAIR.
O	Organic military air.
P	Through bill of lading.
Q	Air freight.
R	Air express.
S	Air charter.
T	Air freight forwarder.
U	QUICKTRANS.
V	Sea-van service.
W	Water, river, lake, coastal (commercial).
X	SEA-lift Express Service (SEA-EX).
Y	Intratheater airlift system.
Z	MSTS (controlled/contract/arranged space).
2	Government Watercraft, Barge/Lighter.
3	Roll on/Roll off service.
4	Armed Forces Courier Service (ARFCOS).
5	United Parcel Service.
6	Military Ordinary Mail (MOM).
7	Weapons System Pouch Service.
8	Pipeline.
9	Local delivery, including deliveries between air or water terminals and adjacent activities.

H-611 Supply Status Card Entries. The supply status card is used to furnish exception status and 100% supply status as follows:

Field/Legend	*Columns*	*Explanation of Entries*
Document identifier	1-3	The appropriate code applicable to supply status, to include the recipient of the status. (See H-602.)
Routing identifier	4-6	The appropriate code of the supply source furnishing the supply status.
Media and status	7	The code as shown on the requisition.
Stock or part No.	8-22	The stock or part number to which status is applicable. (See H-607.3 for status codes applicable to changed or substituted numbers.)
Unit of issue	23-24	The unit of issue applicable to the stock or part number. (See H-607.3 for status code applicable to changed unit of issue.)
Quantity	25-29	The quantity applicable to the item being supplied. (See H-607.3 for status code applicable to quantity change and/or relating to a unit of issue change.)
Document number	30-43	The document number as shown on the requisition.
Suffix	44	The suffix code when the requisitioned quantity is divided into separate supply actions. When the requisition quantity is not divided, this field shall be left blank.
Supplementary address.	45-50	The codes as shown on the requisition.
Signal	51	
Fund	52-53	
Distribution	54-56	
Project	57-59	
Priority	60-61	
Transaction date	62-64	The Julian Date of the transaction on which the supply decision was made.
Status	65-66	The appropriate status code to convey the information regarding the status of the requisition. See H-607.3.
Routing identifier	67-69	The "last known source" to which authorized followup action will be directed.

Field/Legend	*Columns*	*Explanation of Entries*
Estimated Shipping date	70—73	The estimated shipping date (ESD) when materiel shipments will be received by intended consignees later than the standard delivery or required delivery date. When columns 70–73 are blank, it will be assumed that materiel will be received within the prescribed priority designator time frame or by the required delivery date.
Unit price	74–80	The unit price of the stock or part number shown in columns 8–22. When the supply status contains a status code relating to an erroneously routed requisition, this field will be left blank. See H–607.

H–612 Shipment Status Card Entries. The shipment status card is the document by which specific shipping information is furnished in reply to a followup. Entries are as follows:

Field/Legend	*Columns*	*Explanation of Entries*
Document identifier	1–3	The code applicable to the shipment status card to include the coded recipient as indicated in the followup card. See H–602.
Routing identifier	4–6	The appropriate code of the activity furnishing the status.
Media and status	7	The code as shown on the followup card.
Stock or part number.	8–22	The stock or part number of the item supplied.
Unit of issue	23–24	The unit of issue for the item supplied.
Quantity	25–29	The quantity of the item supplied.
Document number	30–43	The document number as shown on the requisition.
Suffix	44	The suffix code, when requisitioned quantity is divided into separate supply actions. When the requisitioned quantity is not divided, this field shall be left blank.
Supplementary address.	45–50	The coded address as shown on the requisition.
Hold code	51	Type of hold code, when applicable. Left blank in response to followup when shipment has not occurred.
Fund code	52–53	The code shown on the original requisition.
Distribution	54–56	The code as shown on the requisition.
Estimated shipping date or date shipped	57–59	The date delivered to carrier. When used in response to a followup and shipment has not occurred, will contain estimated shipping date.
Priority	60–61	The code shown on the requisition.

Field/Legend	*Columns*	*Explanation of Entries*
Transportation Control Number (TCN) or Other Shipment Unit Number (Service Assignment Code of the requisitioner will be omitted when the TCN is used.)	62–76	The TCN for overseas shipments and unregistered parcel post shipments; the consignor, letter B and GBL number for CONUS shipments; the consignor, letter C, and certified mail number for shipments forwarded by certified mail; the consignor, letter R and registration number on registered parcel post; the consignor, letter I and insured number on insured parcel post. Left blank in response to followup when shipment has not occurred.
Mode of shipment	77	The appropriate code identifying the mode of shipment (See H–610).
Date available for shipment or port of embarkation (POE).	78–80	CONUS; Date available for shipment. Overseas: POE except on Parcel Post. Left blank on Parcel Post and in response to a followup when shipment has not occurred.

H–613 Reply to Followup. The reply to a followup will contain the most current information available regarding the status of a requisition and may be as follows:

(i) A supply status card which may contain a change in the estimated shipping date. The transaction date will correspond to the date of reply. (See H–611 for entries.)

(ii) A shipment status card, identified as such in the document identifier. (See H–612 for entries.)

H–614 Replies of Cancellation Requests. The reply to a cancellation request may be as follows:

(i) A supply status card prepared as shown in H–611. The supply status code in Card Column 65–66 will indicate the status of cancellation action.

(ii) If the materiel has already been shipped, a reply identified by the document identifier as a reply to cancellation request—shipment status, will be transmitted. This reply will be in the form of a shipment status card except for the document identifier. See H–612 for entries.

H–615 Management Codes.

H–615.1 *General.* The appropriate management code is entered in Column 72 of requisitions and turn-ins when specified by the contracting Military Department or Agency.

H–615.2 *Air Force Entry of Management Code (Block 23—Manual) (Column 72—Mechanical) (Column 72—Shipping Document for GFM Turn-In, DD Form 1483).*

(a) *General.* Air Force maintenance, production, and research and development contractors when requesting GFM from or returning GFM to Air Force activities shall enter, in Column 72, the appropriate alphabetic character as listed herein.

Code	*Identification of Operation*
C	On all returns to Air Force activities of end items (other than than those excluded in (b) below) from maintenance contracts for modification and modernization.
F	On all requisitions and returns to Air Force activities of GFM including modification kits furnished in support of maintenance, production, and including return of contractor acquired property (CAP).
H	On all returns to Air Force activities of end items (other than those excluded in (b) below) from maintenance contracts for repair and testing.
J	On all requisitions and returns to Air Force activities of Government-furnished aeronautical equipment (GFAE).
K	On all returns of unserviceable components removed from end items and shipped to an Air Force Specialized Repair Activity (SRA).
L	On all requisitions and returns to Air Force activities of Government-furnished equipment (GFE) under loan agreements for maintenance contracts and bailed items under production, and research and development contracts.

(b) *Exclusions.* Air Force transactions involving the following end items are excluded from the provisions of H–615.2(a) above:

(i) complete aircraft and missiles;
(ii) complete vehicles;
(iii) propulsion units;
(iv) industrial plant equipment controlled by the Defense Industrial Plant Equipment Center, Memphis, Tennessee;
(v) COMSEC (Communications Security) and SIGINT (Signals Intelligence) equipment, COMSEC aids (Keying Material);
(vi) forms and publications;
(vii) bulk petroleum and package fuel products; and
(viii) perishable subsistence items and brand-name resale subsistence items.

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APPENDIX I

MATERIAL INSPECTION AND RECEIVING REPORT

Part 1—Introduction

I–101 General.

(a) This appendix sets forth procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 Series) and suppliers commercial shipping/packing lists used to evidence Government Procurement Quality Assurance (PQA).

(b) MIRRs are used to document Procurement Quality Assurance, Acceptance of supplies and services, and shipments; they are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs shall not be used for:

(i) shipments by subcontractors where direct shipment is not made to the Government; or

(ii) shipment of contract inventory.

(c) The contractor shall prepare the MIRR with the exception of those entries required to be completed by the authorized Government representative.

(d) To preclude delays in shipments, payments, and avoid multiple corrections, contractors are encouraged to consult with the cognizant Government representative regarding implementation of this appendix.

(e) Standard abbreviations may be used.

(f) Where optional methods are permitted in this appendix, the exercise of the option shall be at the discretion of the contractor.

I–102 Applicability.

(a) The provisions of this appendix are applicable to supplies or services procured by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 7–104.62) is included in the contract. If the contract contains the fast payment procedure (see 7–104.84), the contractor may elect not to prepare a DD Form 250 and include additional information on his invoice.

(b) When the Department of Defense provides PQA and/or Acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with the instructions of this appendix unless otherwise specified in the contract.

I–103 Use.

(a) The DD Form 250 is a multi-purpose report used for:

(i) PQA—to provide evidence of PQA at origin or destination;

(ii) Acceptance—to provide evidence of acceptance at origin or destination;

(iii) Packing List;

(iv) Receiving;

(v) Shipping;

(vi) Contractor Invoice;

(vii) Contractor Commercial Invoice Support; and

(viii) Contractor Internal Use.

(b) The DD Form 250-1 is used when bulk movements of petroleum products are made by tanker or barge to cover:

(i) Origin acceptance of cargo;

(ii) Shipment of Government-owned product;

NOTE: This Form may also be used to transmit quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or pre-inspection at product source. When so used, it shall be annotated "INSPECTED FOR QUALITY ONLY."

(iii) Destination acceptance of cargo;

(iv) Receipt of Government-owned product.

I-104 Application.

(a) *DD Form 250:*

(1) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line or exhibit subline items, except for those exhibit line or exhibit subline items on a DD Form 1423 that indicate no DD Form 250 is required.

(2) If the "Shipped To," "Marked For," "Shipped From," "Mode of Shipment," "PQA" and "Acceptance" data are the same for more than one shipment made on the same day under the same contract, one MIRR may be prepared to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck or other vehicle, a separate MIRR shall be provided for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one Federal Supply Class or Materiel Management Code (MMC), a separate DD Form 250 shall be prepared for items of each of the Federal Supply Classes or MMC included in the shipment. However, the cognizant Government representative may authorize a single DD Form 250 listing each of the Federal Supply Classes or MMC included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the National Stock Number (NSN) applicable to the item.

(5) Consolidation of Petroleum Shipments on a single MIRR—

(i) *Continental United States:* Multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, may be consolidated on one MIRR. To permit verification of motor deliveries, each load shall be assigned a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Individual loads shall be accompanied by a shipping document (commercial or Government) showing as a minimum, the shipper, shipping point, consignee, contract and line item number, product identification, gross gallons (bulk only), loading temperature (bulk only), API gravity (bulk only), identification of carrier's equipment, serial number of all seals applied, and signature of supplier's representative. When acceptance is at destination, the receiving activity shall retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (ref: I-401, Table I) prior to signing Block 21B.

(ii) *Overseas:* The same criteria as for continental United States applies except the consolidation period may be extended to a time frame acceptable to the receiving activity, shipping activity, Government finance office and the authorized Government Representative having cognizance at the contractor's facility. In addition, more than one contract line item may be included provided the "Shipped To," "Marked For," "Shipped From," "Mode of Shipment," "PQA" and "Acceptance" data are the same for all.

(6) Consolidation of Coal Shipments on a single MIRR—Multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line item, may be consolidated on one MIRR. To permit verification of truck deliveries, each load shall be assigned a load number which can be identified to the shipment number in block 2 of the DD Form 250 and the attached analytical test report. Individual truck loads shall be accompanied by a commercial shipping document showing as a minimum the shipper, the name or names, location and shipping point of the mine or mines from which the coal originates, the contract number, the exact size of the coal shipped, and a certified weighmaster's certificate of weight for the truckload. Rail shipments will be accompanied by a waybill showing the identical information. To permit verification of rail deliveries, each railcar number comprising the shipment shall be identified to the shipment number in block 2 of the DD Form 250 and the attached analytical test report. When acceptance is at destination, the receiving activity shall retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 21B.

(b) *DD Form 250–1:*

(1) A separate form shall be used for each tanker or barge cargo loaded. More than one barge in the same tow may be reported on a single form if on the same contract and consigned to the same destination. When liftings involve more than one contract, separate forms shall be prepared to cover the portion of cargo loaded on each contract. A separate form shall be prepared for each product or grade of product loaded.

(2) A separate document shall be used for each tanker or barge cargo and each grade of product discharged. More than one barge in the same tow may be reported on a single form if from the same loading source.

I–105 Forms.

(a) Contractors may obtain from the Contract Administration Office, upon request, and at no cost, MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms provided that the format and dimensions (*DD Forms 250 and 250c: 8 - 1 / 2 inches x 11 inches, DD Form 250–1: 8 - 1 / 2 inches x 14 inches*) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

I–106 Reproduction. This appendix may be reproduced in whole or in part.

MATERIAL INSPECTION AND RECEIVING REPORT

Part 2—PQA on Shipments Between Contractors

I-201 Instructions. The suppliers' commercial shipping document / packing list shall be used to indicate performance of required PQA actions at subcontract level. The following entries shall be made on the supplier's commercial shipping document / packing list.

Required PQA of listed items has been performed.
..............................(*Signature of Authorized*
Govt. Rep. or DoD Stamp)
..............................(*Date*)
..............................(*Typed Name and Office*)

Distribution for Government purposes shall be one copy:
(i) with shipment;
(ii) for the Government representative at consignee (via mail); and
(iii) for the Government representative at consignor.

MATERIAL INSPECTION AND RECEIVING REPORT

Part 3—Preparation of the DD Form 250 and DD Form 250c

I-301 Preparation Instructions. DD Form 250 (MIRR) and DD Form 250c (Continuation Sheet) shall be prepared as follows:

(a) *General:*.

(i) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 71AUG07, 71SEP24;

(ii) The address, where required, shall consist of the name, street address / P.O. Box, city, state and ZIP Code;

(iii) The Handbook of non-Government Organizations for MILSCAP (H8-1 / H8-2) code, Department of Defense Activity Address Directory (DODAAD) code or Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38-D when contained in the contract, shall be entered to the right of and on the same line as the word "CODE" in Blocks 9 through 12 and in Block 14. The DODAAD code, or MILSCAP (H8-1 / H8-2) code shall be entered in Block 13;

(iv) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries as shown in Blocks 1, 2, 3 and 6 of the DD Form 250;

(v) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified Information*. Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

Block 1—PROC INSTRUMENT IDEN (CONTRACT).

(a) Enter the 13 position alpha-numeric basic Procurement Instrument Identification (PII) number of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PII number, *i.e.*, delivery orders under indefinite delivery type contracts, orders under basic ordering agreements and calls under blanket purchase agreements. This number shall be entered as shown in the examples below. Except as indicated in (b) below, do not enter supplementary numbers used in conjunction with basic PII numbers to identify (i) modifications of contracts and agreements or (ii) modifications to calls/orders or (iii) document numbers representing contracts written between contractors.

1. PROC INSTRUMENT IDEN (CONTRACT) DABE01-66-C-0001	(ORDER) NO.

1. PROC INSTRUMENT IDEN (CONTRACT) DABE01-67-A-0001-0001	(ORDER) NO.

(b) When shipping instructions are furnished by telephone/TWX message and shipment is made prior to receipt of the confirming contract modification (SF 30), the contract modification six digit number or the two digit call/order number which is provided in accordance with 19-204 will be entered immediately following the PIIN or call/order four digit SPIIN.

1. PROC INSTRUMENT IDEN (CONTRACT) | (ORDER) NO.
DABE01-66-C-0001-PV0001

1. PROC INSTRUMENT IDEN (CONTRACT) | (ORDER) NO.
DABE01-67-A-0001-0001AA

(c) For DoD delivery orders on non-DoD contracts, enter the non-DoD ontract number immediately below the PII number.

1. PROC INSTRUMENT IDEN (CONTRACT) | (ORDER) NO.
DSA400-68-F-1684
GS-00S-61917

(d) When a contract number other than PII number is used, enter that contract number.

Block 2—SHIPMENT NO.

(a) The shipment number is composed of a three alpha character prefix and a four numeric or alpha-numeric serial number.

(1) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. Separate prefixes may be assigned when shipments are made from different locations within a facility identified by one "Shipped From" address.

(2) The first shipment made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address, shall be numbered 0001. All subsequent shipments with the identical shipment number prefix shall be consecutively numbered.

a. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. The following alpha-numeric sequence shall be used:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

b. When this series is completely used, numbering shall revert to 0001.

(b) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (Block 16(c)(6)).

(c) The prime contractor shall control deliveries and on the final shipment of the contract shall suffix the shipment number with a "Z". Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to: (i) direct the subcontractor making the final shipment to suffix that shipment number with a "Z", or (ii) upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see I–305) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(d) When commercial invoices are used, see I–306.

Block 3—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

Block 4—B/L TCN. When applicable, enter:

(a) the commercial or Government bill of lading number after "B/L";

(b) the Transportation Control Number after "TCN" (When a TCN is assigned for each line item on the DD Form 250 in accordance with Block 16 instructions, insert "See Block 16."); and

(c) the initial (line haul) mode of shipment code in the lower right corner of the block (I–302).

Block 5.—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(a) The contractor may, at his option, enter the discount terms on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I–306.

Block 6—INVOICE NO./DATE. Enter the invoice number and date as described below:

(a) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. MIRRs other than invoice copies shall not be corrected to reflect the actual date of invoice submission.

(b) When the MIRR is used as an invoice, see I–306.

Block 7—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page enter the total number of pages of the MIRR.

Block 8—ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination.

Block 9—PRIME CONTRACTOR/CODE. Enter the code and address.

Block 10—ADMINISTERED BY/CODE. Enter the code and address of the Contract Administration Office (CAO) cited in the contract.

Block 11—SHIPPED FROM/CODE/FOB.

(a) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(b) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(c) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

NOTE: For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate the information in the "Code" box in these blocks.

Block 12—PAYMENT WILL BE MADE BY/CODE. Enter the code and address of the payment office cited in the contract.

See NOTE under Block 11 above.

Block 13—SHIPPED TO/CODE. Enter the code and address as contained in the contractor shipping instructions.

Block 14—MARKED FOR/CODE. Enter the "Mark For" code and address contained in the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

Block 15—ITEM NO. Enter the contract line item, subline line, exhibit line or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned immediately to the left of the vertical dashed line and prefixed with zeros, if applicable to achieve four digits. Where a six digit identification containing alpha digits in the final two positions is used, enter the last two digits to the right of the vertical dashed line. Do not make an entry on the DD Form 250 for sublines/exhibit sublines which are included in and identified by numerics in the last two positions. Line item identifications not in accordance with the Uniform Contract Line Item Number System, Section XX, will be entered without regard to positioning.

Block 16—STOCK/PART No./DESCRIPTION

(a) Enter, as applicable, for each line item, using single or double spacing between each line item when there are less than four line items, or double spacing when there are four or more line items:

(1) the National Stock Number (NSN) or noncatalog number and if applicable, prefix or suffix; when a number is not provided or it is necessary to supplement the number, include other identification, *e.g.*, manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4-1, and part number; additional part numbers may be shown in parentheses or slashes; the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The following technique may be used in the case of equal kind supply items; the first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(2) On the next printing line if required by the contract for control purposes enter: the make, model, serial number, lot, batch, hazard indicator and/or similar description.

(3) On the next printing lines: the MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract, or shipping instructions followed on the same line, when more than one requisition is entered, by the unit for payment and the quantity shipped against each requisition.

Example:
V0469601850750XY19059A — EA 5
N0018801776038XY3211BA — EA 200
AT650803050051AAT6391J — EA 1000

(4) When a TCN is assigned for each line item, enter on the next line the Transportation Control Number prefixed by "TCN".

(b) When acceptance of a service line item (as differentiating from supplies) is involved, enter the word "SERVICE" followed by as specific a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13 and 14 when shipment of materiel is not involved in the service.

(c) For all contracts administered by Defense Contract Administration Services, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. ___________.
State weight in pounds only.

(d) In addition to entries required above, starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries are applicable to more than one line item in the MIRR, such data may be entered only once after the last line item entry referencing applicable line item numbers.

(1) Enter in capital letters any special handling instructions/limits for material environmental control, *e.g.*, temperature, humidity, aging, freezing, shock, etc.

(2) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, Bureau Control Number (BCN), and Authorization Accounting Activity (AAA) Number (*e.g.*, 17X4911–14003–104).

(3) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T".

(4) When an NSN is required by but not cited in a contract and has not been furnished by the Government, shipment may be made without such NSN at the direction of the contracting officer. Enter the authority for such shipment.

(5) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP".

(6) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I-301, Block 17, for replacement indicators).

(7) On shipments of Government Furnished Aeronautical Equipment (GFAE) under Air Force contracts, the assignment AERNO control number will be entered, *e.g.*, "AERNO 60–6354."

(8) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): NSN or comparable Identification............, Quantity............, Estimated Value............, Authority............"

MATERIAL INSPECTION AND RECEIVING REPORT

(9) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on shipment number..........., date shipped..........."

(10) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to..........., Quantity..........., Item..........., Ownership (*Government/contractor*)."

(11) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(12) On Foreign Military Sales (FMS) or Military Assistance Program (MAP) (Grant Aid) shipments, enter the special markings, the applicable FMS country and case identifier or MAP Record Control/Program/Directive Number identifier as provided in the contract, and the gross weight.

(13) Reserved.

(14) Reserved.

(15) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the ACO/PCO: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The ACO/PCO shall advise (a) the consignee of the results (approval/disapproval) and (b) the contractor to withhold invoicing pending attachment to his invoice of the approved test/evaluation results.

(16) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(17) For Clothing and Textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(18) When the initial unit incorporating an approved Value Engineering Change Proposal (VECP) is shipped, enter the following statement:

> *This is the initial unit delivered which incorporates VECP No. ...., Contract Modification No. ...., dated ....*

Block 17—QUANTITY SHIPPED/RECEIVED.

(a) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(b) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to: (i) direct the subcontractor making the final shipment to enter a "Z" below the quantity, or (ii) upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see I-305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. The "Z" shall not be used on deliveries which equal or exceed the contract line item quantity.

(c) If a replacement shipment is involved, enter below the last digit of the quantity, the letter "A" to designate first replacement, "B" for second replacement, etc. The final shipment indicator "Z" on underrun deliveries shall not be used when a final line item shipment is replaced.

17. QUANTITY
SHIP/REC'D
1000
(10)
Z

(d) If the quantity received is the same quantity shipped and all items are in apparent good condition, indicate by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and encircle. The receiving activity shall annotate the DD Form 250 stating the reason for the difference.

Block 18—UNIT. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129 (Marking for Shipment and Storage). For example: LB for pound; SH for sheet.

18. UNIT
LB
(SH)

Block 19—UNIT PRICE. The contractor may, at his option, enter unit prices on all MIRR copies, except as a minimum:

(a) On Navy procurements, the two copies of the MIRR addressed to the consignee via mail shall be priced using actual prices or, if not available, estimated prices. When the price is estimated, enter an "E" after the price. Contractors shall make every effort to ensure that actual or estimated prices are entered on the MIRR. However, shipments shall not be delayed solely because required prices are not available.

(b) When the MIRR is used as an invoice, see I-306.

(c) For Clothing and Textile contracts containing a bailment clause, enter the cited Government Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(d) Copies distributed to Foreign Military Sales Representatives in accordance with I-401, Table 2, shall be priced using actual or, if not available, estimated price.

Block 20—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

Block 21—PROCUREMENT QUALITY ASSURANCE.

(a) The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(b) When a shipment is authorized under Alternative Release Procedure, the appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS.

(c) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the PQA and Acceptance statements. The appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS. When acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the MIRR sent with shipment.

"A. ORIGIN"

(1) The authorized Government representative shall:

a. Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin Procurement Quality Assurance and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk shall be entered at the end of the statement and an explanatory note entered in Block 16;

b. Enter the date of signature;

c. Sign; and

d. Enter the typed, stamped, or printed name and office DODAAD code.

(2) When Alternative Release Procedures apply, the contractor or subcontractor shall complete the entries required under (1) a and d above and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed PQA/Acceptance statement. When acceptance is at origin and Contract Administration is performed by an office other than DCAS, the contractor shall furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy and forwarding of all copies to the payment office. When acceptance is at origin and contract administration is performed by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office (see I–401, Table 1).

(3) When Fast Pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed

BEST DOCUMENT AVAILABLE

PQA / Acceptance statement. When PQA is required, the authorized Government representative shall execute the block as required by (1) above.

(4) When Certificate of Conformance procedures apply, acceptance is at source, and the Contractor's Certificate of Conformance is used as additional assurance that supplies conform to contract requirements, the Authorized Government Representative shall make entries required by "A. ORIGIN" (1) a, b, c, and d above. When the Contractor's Certificate of Conformance is used as the sole basis for acceptance in accordance with 14–306(c), and acceptance is at source, the contractor shall place an "X" in the Acceptance Block; and complete the entries required by "A. ORIGIN" (1)d above. For contracts administered by an office other than DCAS, furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy, and forwarding of all copies to the payment office. For contracts administered by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office. (See I–401, Table 1.) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

"B. DESTINATION"

(1) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(2) When PQA and Acceptance or Acceptance is at destination, the authorized Government representative shall:.

a. Place an "X" in the appropriate box(es).

b. Enter the date of signature;

c. Sign; and

d. Enter typed, stamped, or printed name and title.

(3) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by B(2) above.

(4) The executed payment copy or MILSCAP Format Identifier PKN or PKP shall be forwarded to the payment office cited in Block 12 within four work days (*five days when MILSCAP Format is used*) after delivery and acceptance of the shipment by the receiving activity. One executed copy of the final DD Form 250 shall be forwarded to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a DCASR is cited as the payment office in Block 12.

(5) When "FAST PAY" is entered in Block 21A, no entries shall be made in this block.

Block 22—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

Block 23—CONTRACTOR USE ONLY. This block is provided and reserved for Contractor use.

I-302 Mode of Shipment Codes.

Code	*Description*
A	Motor, truckload
B	Motor, less truckload
C	Van (unpacked, uncrated personal and/or Government property)
D	Driveaway, truckaway, towaway
E	Busline
F	Military Airlift Command (MAC)
G	Regular mail, parcel post
H	Air Mail, parcel post
I	Government truck, including common service
J	REA express
K	Rail, carload
L	Rail, less carload
M	Freight forwarder
N	Contract air (LOGAIR/QUICKTRANS)
O	Organic military air, Flyaway
P	Through bill of lading
Q	Air freight
R	Air express
S	Air charter
T	Air freight forwarder
U	Air van
V	Sea-van service
W	Water, river, lake, coastal (Commercial)
X	Sealift Express Service (SEA-EX)
Y	Intratheater Aiflift System
Z	MSC (controlled/contract/ arranged space)
2	Government Watercraft, Barge/Lighter
3	Roll-on/Roll-off service
4	Armed Forces Courier Service (ARFCOS)
5	United Parcel Service
6	Military Ordinary Mail (MOM)
7	Weapons System Pouch
8	Pipeline
9	Local delivery, including deliveries to ports from adjacent supply activities, handcarry
*	No Physical Movement
%	Unassigned

MATERIAL INSPECTION AND RECEIVING REPORT

I-303 Consolidated Shipments. When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of Procurement Quality Assurance or Acceptance prior to the time of actual shipment. (See Block 3.)

I-304 Multiple Consignee Instructions. When the identical line item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and requires origin acceptance, one MIRR may be prepared. Preparation shall be as prescribed in this appendix with the following changes:

(i) Blocks 2, 4, 13 and, if applicable, 14—Enter "See Attached Distribution List."

(ii) Block 15—Item numbers may be grouped for identical stock/part number and description.

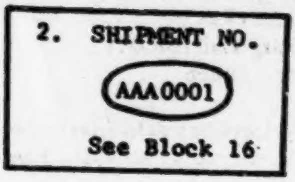
(iii) Block 17—Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(iv) The DD Form 250c shall be used to list each individual "Shipped To" and "Marked For" with code(s) and complete shipping address and a sequential shipment number for each; line item number(s); quantity; MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) and quantity for each when provided in the contract or shipping instructions; and if applicable, Bill of Lading number, TCN, and Mode of Shipment Code.

(v) Pages of DD Form 250c comprising the distribution list that are not applicable to the individual consignee may be omitted from the MIRR furnished that consignee. A complete MIRR shall be provided for all other distribution.

I-305 Correction Instructions. When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, a revised or new MIRR shall be effected by correcting the original master or preparing a new MIRR containing the identical data of the original MIRR and distributing the corrected form. MIRRs shall not be corrected for Block 19 and 20 entries. The corrections shall be made as follows:

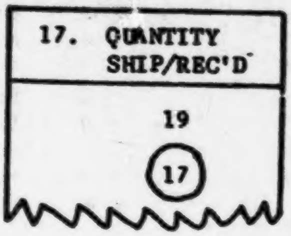
(i) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block.



2. SHIPMENT NO.

AAA0001

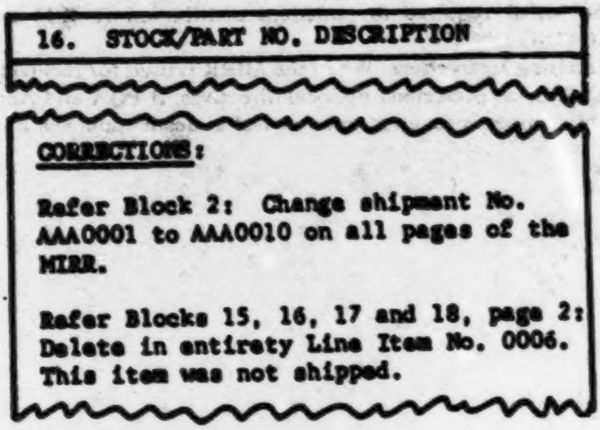
See Block 16



17. QUANTITY SHIP/REC'D

19

17



16. STOCK/PART NO. DESCRIPTION

CORRECTIONS:

Refer Block 2: Change shipment No. AAA0001 to AAA0010 on all pages of the MIRR.

Refer Blocks 15, 16, 17 and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(ii) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) the words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(iii) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY", avoiding obliteration of any other entries. Where corrections are made only on continuation sheets, page number 1 shall also be marked "CORRECTED COPY."

(iv) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

I-306 Invoice Instructions. Contractors are encouraged to use copies of the MIRR as an invoice, in lieu of a commercial form, but are not required to do so. If commercial forms are used, the related MIRR shipment number(s) shall be identified thereon. Copies of the MIRR used as an invoice are in addition to the standard distribution (I-401). The four invoice copies shall be prepared and forwarded to the payment office as follows:

(i) Complete Blocks 5, 6, 19 and 20. Column 20 shall be totalized.

(ii) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE"; three copies: "INVOICE COPY".

(iii) Forward the four copies to the payment office (Block 12 Address), except when acceptance is at destination and a Navy Finance Office will make payment, forward to destination.

(iv) The invoice and the four "Payment Office" (Part 4, Table 1) copies of the MIRR shall not be fastened together.

MATERIAL INSPECTION AND RECEIVING REPORT

I-307 Packing List Instructions. Copies of the MIRR may be used as a packing list. When they are used, the packing list copies shall be in addition to the copies of the MIRR required for standard distribution (I-401) and shall be marked "PACKING LIST."

I-308 Receiving Instructions. When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and Acceptance or Acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

MATERIAL INSPECTION AND RECEIVING REPORT

Part 4—Distribution of DD Form 250 and DD Form 250c

I–401 Distribution.

(a) The contractor is responsible for distribution, including mailing and payment of postage, of DD Form 250 in accordance with Tables 1 and 2.

(b) Distribution of MIRRs shall be in accordance with and limited to the distribution and the quantities as provided in Tables 1 and 2. Air mail shall be used wherever it is faster than regular mail.

(c) Distribution of MIRRs on non-DoD contracts shall be in accordance with this Part as amended by the contract.

(d) Distribution shall be made promptly, but no later than the close of business of the work day following:

- (i) signing of the DD Form 250 (Block 21A) by the authorized Government representative, or
- (ii) shipment when authorized under terms of Alternative Release; Certificate of Conformance; or Fast Pay procedure, or shipment when PQA and Acceptance are to be performed at destination.

(e) The consignee copies (via mail) on overseas shipments shall *not* be sent to Port of Embarkation (POE). These copies shall be sent to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 1

STANDARD DISTRIBUTION

With Shipment *	4
Consignee (*via mail*)	2
(*For Navy procurement, copies will be priced*) (For Grant Aid/Foreign Military Sales, consignee copies are not required).	
Contract Administration Office	1
(Forward direct to address in Block 10 except when addressee is a DCASR, DCASD, or DCASO, and a Certificate of Conformance (see I-301, Block 21(c)A(4)) or the Alternate Release Procedures (see I-301, Block 21(c)A(2)) is involved, and acceptance is at origin; then, forward through the Authorized Government Representative.)	
Purchasing Office	1
Payment Office **	4
(Forward direct to addressee in Block 12 except (i) when addressee in Block 10 is a DCASR, DCASD, or DCASO and Payment Office in Block 12 is a DCASR do not make distribution; (ii) when addressee in Block 12 is HQ AFCMD attach only one copy to the required number of copies of the contractor's invoice; (iii) when acceptance is at destination and a Navy Finance Office will make payment, forward to destination; and (iv) when a Certificate of Conformance (see I-301, Block 21(c)A(4)) or the Alternative Release Procedures (see I-301, Block 21(c)A(2)) is involved and acceptance is at origin, forward the copies through the Authorized Government Representative.)	
ADP Point for CAO (*Applicable to Air Force only*)	1
(When an AFPRO is specified as the administering activity in Block 10, or HQ AFCMD is cited as Payment Office in Block 12, send *one* copy to HQ AFCMD immediately upon signature. If submission of delivery data is being made by mechanical means, distribution of this hard copy need not be made to HQ AFCMD.)	

*Attach as follows:

Type of Shipment	*Location*
Carload or truckload:	Affix to the shipment where it will be readily visible and available upon receipt.
Less-than-carload or truckload:	Affix to container number one, or container bearing lowest number.
Mail, including parcel post:	Attach to outside or include in the package. Include a copy in each additional package of multipackage shipments.
Pipeline or tank car: Railroad cars for coal movements	Forward with consignee copies.

**Payment by DCASRs will be based on the source acceptance copies of DD Forms 250 forwarded to the Contract Administration Office except in those rare instances where distribution will be made to DCASR Payment Offices in accordance with the above distribution schedule.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2

SPECIAL DISTRIBUTION

As Required	*Address*	*Number of Copies*
Each: Navy Status Control Activity, Army, Air Force, DSA Inventory Control Manager.	Address specified in the contract.	1 Each addressee
Quality Assurance Representative	Address specified by the assigned Quality Assurance Representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract.	1
Purchasing Office other than office issuing contract.	Address specified in the contract.	1
Foreign Military Sales Representative.	Address specified in the contract.	6
Military Assistance Advisory Group (Grant Aid Shipments).	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army		
Foreign Military Sales/ Military Assistance Program (Grant Aid)	Commander US Army Security Assistance Center ATTN: DRSAC-OP 3rd Street and "M" Avenue, Bldg 54 New Cumberland Army Depot New Cumberland, PA 17070	1
Air Force		
On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command Aerospace Vehicle Distribution Office (MCNAPV) Wright-Patterson AFB, Ohio 45433	1
When above items are delivered to aircraft modification centers.	A. F. Plant Representative Office	1
Foreign Military Sales/ Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters Ottawa, Ontario Canada K1A OK4 Attn: DPSUPS3	1
Other Than Canada	Address specified in the contract.	1

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MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2—Continued

As Required	*Address*	*Number of Copies*
When consignee is an Air National Guard Activity	Consignee address (Block 13), ATTN: Property Officer	3
Navy		
When typed code (TC) 2T or 7T is shown in Block 16	Navy Regional Finance Center PAD (FPA) Washington, D. C. 20371	2
Foreign Military Sales/ Military Assistance Program (Grant Aid)	Navy International Logistics Control Office (NAVILCO) Bayonne, N. J. 07002	3
When shipment is consigned to another contractor's plant for a Government representative	Navy Regional Finance Center PAD (FPA) Washington, D. C. 20371	2
When Block 16 indicates the shipment includes GFP	Navy Regional Finance Center PAD (FPA) Washington, D. C. 20371	2
Marine Corps		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps Headquarters, USMC Washington, D. C. 20380	1
	Commanding General Marine Corps Supply Activity 1100 South Broad Street Philadelphia, Pa. 19146	3

MATERIAL INSPECTION AND RECEIVING REPORT

Part 5—Preparation of the DD Form 250-1 (LOADING REPORT)

I-501 Instructions. The DD Form 250-1 shall be prepared in accordance with the following instructions when applied to a tanker or barge cargo lifting. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as appropriate and place "X" to indicate loading report.

Block 2—INSPECTION OFFICE. Enter the name and location of the Government office conducting inspection.

Block 3—REPORT NO. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. In case shipment is made from more than one location against the same contract, follow this numbering system at each location.

Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (loading). Indicate the applicable Government activity.

Block 5—DEPARTMENT. Indicate Military Department owning product being shipped.

Block 6—PRIME CONTRACT OR P.O.NO. Enter the contract or purchase order number.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading). Enter the name and address of the contractor as shown in the contract.

Block 8—STORAGE CONTRACT. Enter storage contract number if applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Enter the name and location of the contractor facility from which shipment is made. Also indicate delivery point in this space as either "FOB Origin" or "FOB Destination."

Block 10—ORDER NO. ON SUPPLIER. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter the name and geographical address of the consignee as shown on the shipping order.

Block 12—B/L NUMBER. Where applicable, enter the initials and number of the bill of lading. If commercial bill of lading later to be converted to a Government bill of lading is authorized, show "Com. B/L to GB/L."

Block 13—REQN. OR REQUEST NO. Enter number and date if cited in the shipping instructions.

Block 14—CARGO NO. Enter the cargo number furnished by the ordering office.

Block 15—VESSEL. Enter the name of tanker or barge.

Block 16—DRAFT ARRIVAL. Enter the vessel's draft on arrival.

Block 17—DRAFT SAILING. Enter the vessel's draft on completion of loading.

Block 18—PREVIOUS TWO CARGOES. Enter the type of product constituting previous two cargoes.

Block 19—PRIOR INSPECTION. Leave blank.

Block 20—CONDITION OF SHORE PIPELINE. Indicate condition of line (full or empty) before and after loading.

Block 21—APPROPRIATION (Loading). Indicate the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy or Air Force (as appropriate) owned Stock."

Block 22—CONTRACT ITEM NO. Enter the contract item number applicable to the shipment.

Block 23—PRODUCT. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

Block 24—SPECIFICATIONS. Enter the specification and amendment number shown in the contract.

Block 25—STATEMENT OF QUANTITY. Enter in the "LOADED" column, the net barrels, net gallons and long tons for the cargo loaded. NOTE: If more than 1 / 2 of 1% difference exists between the ship and shore quantity figures an investigation shall be made immediately to determine the cause of such difference. If necessary, corrected documents shall be prepared; otherwise, a statement shall be placed in Block 28 as to the probable or actual cause of the difference.

Block 26—STATEMENT OF QUALITY.

(a) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(b) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. Applicable waivers to technical requirements shall be listed.

(c) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

Block 27—TIME STATEMENT. Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. These dates and times shall be taken from either the vessel or shore facility log. The Government representative shall assure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Date and time vessel left berth shall not be entered on documents placed aboard the vessel but shall appear on all other copies. All dates shall be expressed in sequence of day, month, and year with the month spelled out or abbreviated (*e.g.*, 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

Block 28—REMARKS. Use this space for reporting:

(a) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(b) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(c) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(d) When product title is vested in the U. S. Government, insert in capital letters "U. S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(e) If the form covers shipments for Military Assistance Program support, enter in this space "FY-(the year)—MAP" in half-inch letters. Also indicate the MAP reference number—*i.e.*, program directive number or MAP case number if known.

(f) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

Block 29—COMPANY OR RECEIVING TERMINAL. Line out "OR RECEIVING TERMINAL" and secure the signature of the supplier's representative. The signature shall be applied to the master ditto or all copies of the form.

Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE. Line out "DISCHARGED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the document. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

Block 31—CERTIFICATION BY MASTER OR AGENT. Obtain the signature of the master of the vessel or its agent. The signature shall be applied to the master ditto or all copies of the form.

MATERIAL INSPECTION AND RECEIVING REPORT

Part 6—Preparation of the DD Form 250-1 (DISCHARGE REPORT)

I-601 Instructions. The DD Form 250-1 shall be prepared in accordance with the following instructions when applied to a tanker or barge discharge. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as applicable and place "X" to indicate discharge report.

Block 2—INSPECTION OFFICE. Indicate Government activity performing inspection on the cargo received.

Block 3—REPORT NO. Leave blank.

Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (loading). Indicate Government agency shown on loading report.

Block 5—DEPARTMENT. Indicate Department owning product being received.

Block 6—PRIME CONTRACT OR P.O. NO. Indicate the contract or purchase order number shown on the loading report.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading). Indicate name and location of contractor who loaded the cargo.

Block 8—STORAGE CONTRACT. Enter the number of the contract under which material is placed in commercial storage where applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Indicate source of cargo.

Block 10—ORDER NO. ON SUPPLIER. Make same entry appearing on loading report.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter receiving activity's name and location.

Block 12—B/L NUMBER. Enter as appears on loading report.

Block 13—REQN. OR REQUEST NO. Leave blank.

Block 14—CARGO NO. Enter cargo number shown on loading report.

Block 15—VESSEL. Enter name of tanker or barge discharging cargo.

Block 16—DRAFT ARRIVAL. Enter draft of vessel upon arrival at dock.

Block 17—DRAFT SAILING. Enter draft of vessel after discharging.

Block 18—PREVIOUS TWO CARGOES. Leave blank.

Block 19—PRIOR INSPECTION. Enter the name and location of the Government office which inspected the cargo loading.

Block 20—CONDITION OF SHORE PIPELINE. Indicate condition of line (full or empty) before and after discharging.

Block 21—APPROPRIATION (Loading). Leave blank.

Block 22—CONTRACT ITEM NO. Enter the item number shown on the loading report.

Block 23—PRODUCT. Enter information appearing in Block 23 of the loading report.

Block 24—SPECIFICATIONS. Enter information appearing in Block 24 of the loading report.

Block 25—STATEMENT OF QUANTITY. Enter applicable data in proper columns.

(a) "LOADED" figures shall be taken from the loading report.

(b) Quantities discharged shall be determined from shore tank gauges at destination.

(c) If a grade of product is discharged at more than one point, the loss or gain for that product shall be calculated by the final discharge point. Amounts previously discharged shall be as reported on discharge reports prepared by the previous discharge points. Volume figures shall be transmitted by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(d) The loss or gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN" as applicable.

(e) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

Block 26—STATEMENT OF QUALITY.

(a) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(b) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(c) Enter the results of tests performed under the heading "TEST RESULTS."

Block 27—TIME STATEMENT. Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. The dates and times shall be taken from either the vessel or shore facility log. The Government representative shall assure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Date and time vessel left berth shall not be entered on documents placed aboard the vessel but shall appear on all other copies. All dates shall be expressed in the sequence of day, month and year with the month spelled out or abbreviated (e.g., 10 Sept 67).

Block 28—REMARKS. Use this space for reporting important facts such as:

(a) Delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(b) Abnormal individual losses contributing to the total loss. The cause of such losses shall be indicated as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (indicate tanks in which contained), spillages, line breaks etc. Where gravity group change of receiving tank contents results in a fictitious loss or gain, such fact shall be noted. Irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point shall be noted if indicative of an abnormal transportation loss or contamination.

Block 29—COMPANY OR RECEIVING TERMINAL. Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal. The signature shall be applied to the master ditto or all copies of the form.

Block 30—Certification by Government Representative. Line out "LOADED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

Block 31—Certification by Master or Agent. Obtain the signature of the master of the vessel or the vessel's agent. The signature shall be applied to the master ditto or all copies of the form.

MATERIAL INSPECTION AND RECEIVING REPORT

Part 7—Distribution of the DD Form 250-1

I-701 Distribution.

(a) The completed DD Form 250-1 shall be distributed by the Government representative in accordance with Table 3 of this Appendix as may be amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible but not later than 24 hours following completion of the form.

[See Table 3 on following pages]

I-702 Corrected DD Form 250-1. When errors are made in entries on the form which would affect payment or accountability, corrected copies shall be made. Entries corrected shall be encircled on all copies, the form plainly identified as "CORRECTED COPY" and distribution made to all recipients of the original distribution.

TABLE 3 DD FORM 250-1 DISTRIBUTION

		Number of Copies			
		Loading		Discharge	
Type of Shipment	Recipient of DD Form 250-1	Tanker	Barge	Tanker	Barge
		Prepared by Shipper/Govt. Representative		Prepared by Receiving Activity	
On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy (attached to ullage report) in each of 4 envelopes & mark envelopes "Consignee-First Destination," "Consignee-Second Destination," etc., for delivery via the tanker.	Each Consignee By mail (CONUS shipments only) With Shipment	 2 1	 1 1	(as required)	(as required)
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	(as required)	(as required)	(as required)	(as required)
	Cognizant Inspection Office	1	1	1	1
	Government Representative at each Destination Responsible for Quality	1	1	1	1
	Government Representative at Cargo Loading Point	1	1	1*	1*
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command Code 331 Washington, DC 20390	2	2	2	2
See contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: If this is DASC-F, send copies to Defense Fuel Supply Center ATTN: DFSC-CDK, Cameron Station Bldg 5, Alexandria, VA 22314 (Do not send copies to DASC-F)	2	2	2	2

*With copy of ullage report.

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TABLE 3—Continued

Type of Shipment	Recipient of DD Form 250-1	Number of Copies			
		Loading		Discharge	
		Tanker	Barge	Tanker	Barge
		Prepared by Shipper/Govt. Representative		Prepared by Receiving Activity	
For shipments and receipts of DFSC financed cargoes for which DAAC-F is not the Paying Office.	Accounting Office, DFSC, ATTN: DFSC-CD, Cameron Station, Alexandria, VA 22314	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers & barges, & FOB destination tankers with copy of ullage report.	DFSC-OC, Cameron Station Alexandria, VA 22314	1	1	1**	1
		**Dry Tank certificate to accompany DD Form 250-1 and ullage report.			
On Army ILP shipments.	US Army International Logistics Center New Cumberland Army Depot New Cumberland, PA 17070	2	2	2	2
NAVY On all shipments to Navy-Operated Terminals	Navy Fuel Petroleum Office Cameron Station Alexandria, VA 22314	2	1	2	1
On all shipments to AF bases	Directorate of Energy Mgmt SA ALC (SFQ) Kelly AFB, TX 78241	1	1	1	1
On all CONUS loadings.	DFSC Fuel Region(s) cognizant of Shipping Point	1	1	1	1
On all shipments to CONUS Destinations.	DFSC Fuel Region(s) cognizant of Shipping and Receiving Point	1	1	0	0
For all discharges of cargoes originating at DFSPs & discharging at activities not a Defense Fuel Support Point	Accounting Office, DFSC ATTN: DFSC-CD Cameron Station Alexandria, VA 22314			1***	1***

*** The copies of DD Form 250-1, forwarded by bases, will include the following in Block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.

BEST DOCUMENT AVAILABLE

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TABLE 4 JOINT PETROLEUM OFFICES
(Areas and Addresses)

Command	*Area*
LANTCOM	**Antilles, Bahamas, Bermuda, Cuba, Azores, Iceland, Ascension Island** for Navy terminals in United Kingdom, Norway, and Portugal
USEUCOM	**Western Europe, United Kingdom, Mediterranean, Turkey,** Africa, Madagascor, and Middle East West of Pakistan
PACOM	**Taiwan, Hawaii, Marianas, Philippines, Japan, Korea, Ryukyus, Australia, New Zealand, Burma, Thailand, Malaya, East Indies, South Pacific Islands**, Ceylon, Southern Asia East of Iran, and Diego Garcia
SOCOM	**Central and South America**

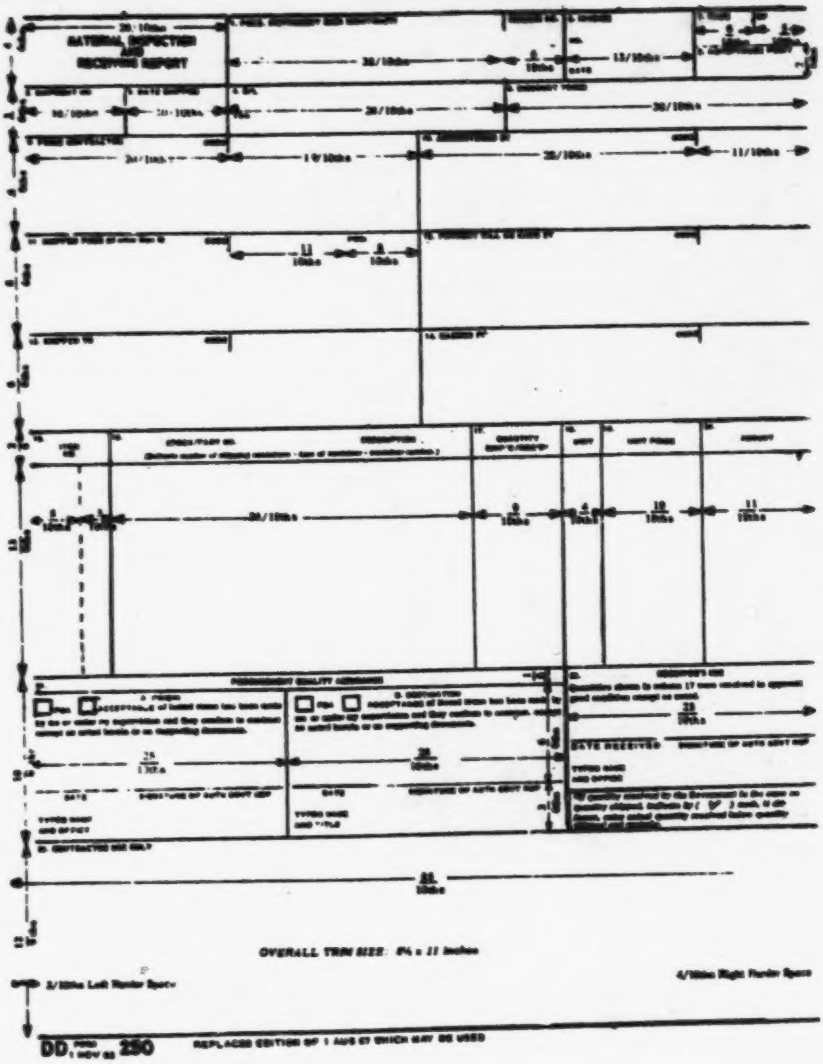
Commands	*Correspondence Addresses*	*Message Addresses*
CINCLANT	**Commander-in-Chief** **Atlantic Command** **ATTN: JPO** **Norfolk, Va. 23511**	**JPO CINCLANT**
USCINCEUR	Headquarters United States Command ECJ4/7-LOJPO **APO New York 09128**	**JPO USCINCEUR**
CINCPAC	Joint Petroleum Office (JPO) Staff CINCPAC Box 20 Camp H. M. Smith, HI 96861	**JPO CINCPAC**
USCINCSO	**Commander-in-Chief** **U.S. Southern Command** **ATTN: JPO** **APO New York 09826**	**JPO USCINCSO**

[The next page is I:33.]

MATERIAL INSPECTION AND RECEIVING REPORT

Part 8—Form Examples

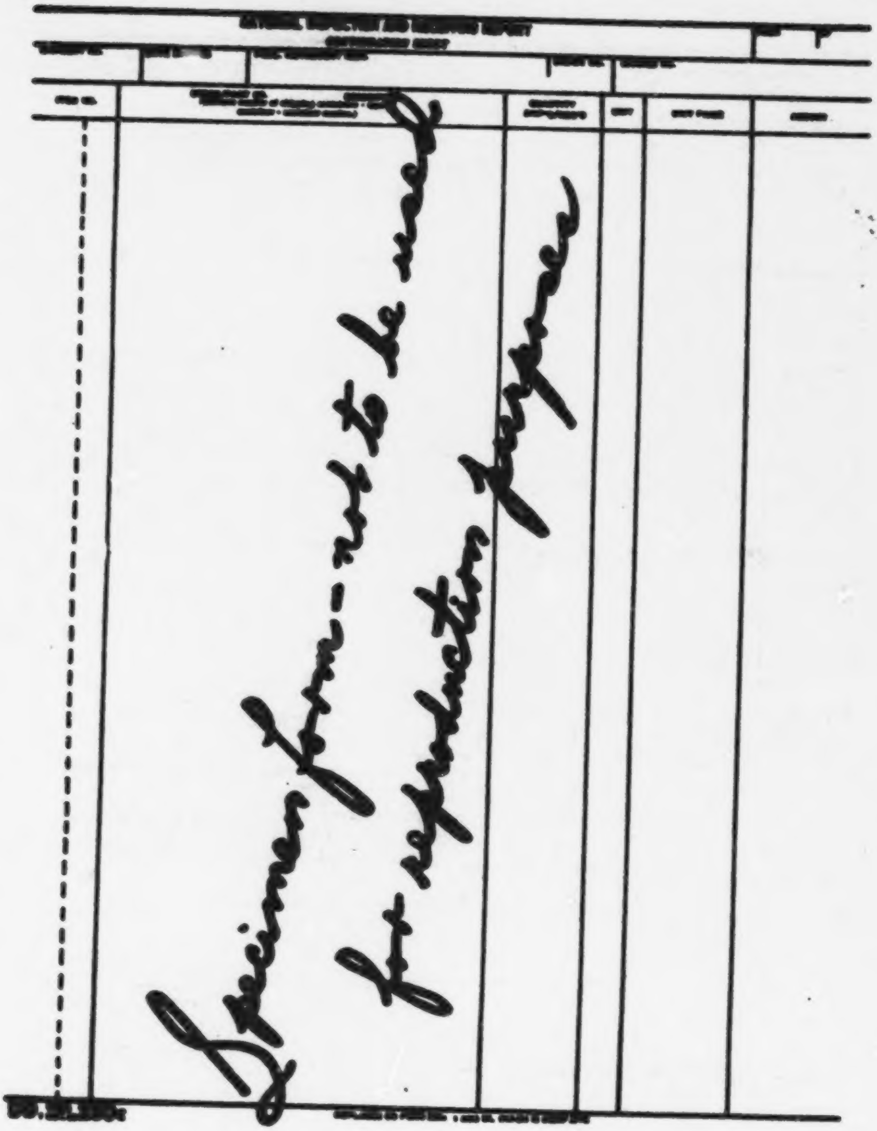
I-801 DD Form 250: Material Inspection and Receiving Report


MATERIAL INSPECTION AND RECEIVING REPORT
20/10ths
30/10ths
20/10ths
15/10ths
11/10ths
OVERALL TRIM SIZE: 8½ x 11 inches
3/10ths Left Border Space
4/10ths Right Border Space
DD FORM 1 NOV 65 250
REPLACES EDITION OF 1 AUG 57 WHICH MAY BE USED

MATERIAL INSPECTION AND RECEIVING REPORT

I-802 DD Form 250c: Material Inspection and Receiving Report

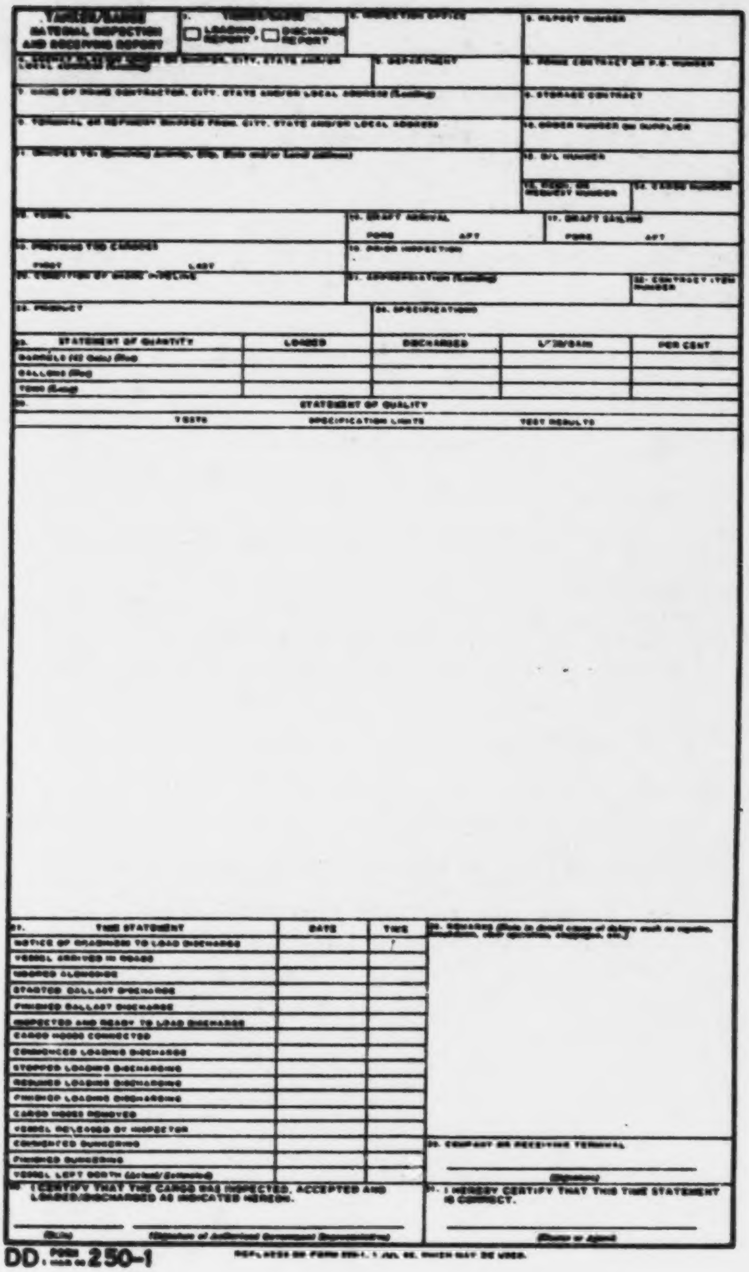
Continuation Sheet



Specimen form - not to be used for reproduction purposes

MATERIAL INSPECTION AND RECEIVING REPORT

I-803 DD Form 250—1: Tanker/Barge Material Inspection and Receiving Report



APPENDIX J—AUTHORIZATION FOR NEGOTIATION

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APPENDIX J

AUTHORIZATION FOR NEGOTIATION

J-000 Scope of Appendix. This Appendix sets forth guidance for the preparation of (i) Justification for Authority to Negotiate (JAN) in support of a Determination and Findings (D&F) to be made by the Secretary of a Department (3-302(i) through (vi)); and (ii) formats for D&Fs, (A) to negotiate an individual contract or a class of contracts; (B) with respect to the type contract to be used; and (C) waiving a requirement for submission of cost or pricing data and certification thereof. Examples, supplemented by illustrations and explanatory information for each format, are included. The Departments are authorized to increase or decrease the requirements of this Appendix in accordance with their needs.

AUTHORIZATION FOR NEGOTIATION

Part 1—General

J-100 Scope of Part. This Part sets forth guidance for the preparation of a JAN in support of a Determination and Findings (D&F) to be made by the Secretary of the Department.

J-101 Preparation of the JAN.

(a) The determination to formally advertise or to negotiate is governed by the specific facts in a procurement. When the decision is to negotiate and Secretarial authority is required, the proposed D&F must be supported by a procurement plan (PP). A PP prepared in accordance with 1-2102 may be used to satisfy this requirement. In such cases, a JAN cover sheet will be attached to the front of the PP. A sample format of the JAN cover sheet is set forth on page J:3. A format may be modified to fit specific cases; however, the certification and signatures cited thereon shall be included in all cases.

(b) The head of the contract or purchase division, or its equivalent, of the appropriate procuring activity or purchasing activity, shall be generally responsible for the preparation and justification of the proposed D&F and for all contracting aspects discussed in the supporting justification. However, any changes which have occurred since approval of the PP should be attached, if the PP is not revised or updated, to the JAN cover sheet together with any information required by Part 2 hereof not already provided in the PP which is necessary to support the proposed D&F. Where the information furnished in a justification relates to a proposed class D&F, it shall fully support the proposed negotiation authority as to the class of items as a whole or to each item, whichever is applicable, in order to provide the same information that would have been furnished if the item were covered by an individual D&F.

AUTHORIZATION FOR NEGOTIATION

JAN NO. ______________________

JUSTIFICATION FOR AUTHORITY TO NEGOTIATE UNDER 10 U.S.C. 2304(a)( )

(MILITARY DEPARTMENT OR AGENCY)

(PROCURING OR PURCHASING ACTIVITY)

For The Reasons Set Forth Herein, It Is Requested That Procurement By Negotiation Be Authorized For The Purchase Of:

(BRIEF IDENTIFICATION OF MATERIALS OR SERVICES)

(Include Quantities and Program Identity)

Planned Delivery—To Commence ______________ *(Date)* **To Finish** ______________ *(Date)*

Prepared by:
Name Phone Date
____

D&F Approved by Counsel
Name Phone Date
____

Contracting Officer
Name Phone Date
____

Reviewing Official
Name Title Date
____

It is certified that the facts and representations under my cognizance which are included in the PP Number .... and the attached Determination and Findings are accurate to the best of my knowledge and belief.

Technical Cognizance
Signature Code Phone Date
____

Requirements Cognizance
Signature Code Phone Date
____

AUTHORIZATION FOR NEGOTIATION

Part 2—Special Procedures for JAN for 10 USC 2304(a)(11) thru (16)

J-200 Scope of Part. This Part sets forth additional information to be included in support of a Determination and Findings (D&F) to be made by the Secretary of a Department, with respect to a contract to be negotiated under 10 U.S.C. 2304(a)(11), as well as those peculiar to a contract negotiated under 10 U.S.C. 2304(a)(12), (13), (14), (15), or (16). Such additional information if not already included in the Procurement Plan (PP), will be attached to the JAN cover sheet or made part of the plan. The statutory negotiation authority is hereafter referred to as "Exception (11)", "Exception (12)", and so forth.

(a) *Exception (11)* — When this exception is proposed for use, include the following when applicable:

- (i) a non-technical description of the features of the property or services to be procured which demonstrate that the procurement is for experimental, developmental or research work or for the making or furnishing of property for experiment, test, development, or research, or a combination of two or more of the foregoing;
- (ii) a technical description of the proposed effort and its purpose showing which type of research and development (as defined in 4-101(a)) the proposed contract is to cover (see 3-211.2);
- (iii) a statement that the proposed contract is limited to the quantities of experimental or test models, or prototypes necessary to accomplish the experiment, development, research or test required, and the basis for each quantity required, within the meaning of 3-211.3;
- (iv) the specific identifying number and the line item in the research and development program of the Military Department concerned;
- (v) a clear, concise statement of the technical concept, the specific objectives sought and the intended use or application of the end results;
- (vi) the basis for concluding that the current level of technology supports the feasibility of the proposed effort;
- (vii) the technical distinction between the procurement and related efforts, prior and current, having similar techniques and goals; if part of a parallel effort, state the reason(s) for pursuing different techniques;
- (viii) when related to previous or concurrent contracts, a description of the accomplishments leading to the procurement;
- (ix) whether a Technical Development Plan (TDP) is required and if so, the identification of such document and whether Departmental approval has been obtained;
- (x) whether the procurement has been coordinated with the Director of Defense Research and Engineering, other Military Departments, other Federal agencies or with other Departmental agencies who have an interest in the same or similar research and development fields; if a joint project or program, a statement of the coordination with similar work being pursued elsewhere under joint funds and the dollar amounts of current funding provided by each participating activity; and

(xi) whether the item to be developed, or the knowledge gained in its development, may have potential commercial application(s).

(b) *Exception (12)* — When this exception is proposed for use, the justification shall contain sufficient information about the item being procured to identify the characteristics warranting a security classification, that is, that should not be publicly disclosed. The simple statement that an item is classified is not sufficient. The nature of the security requirement shall be identified in unclassified language to amplify what will be revealed by data included in the solicitation, such as "operating depth of submarines," "noise characteristics of the equipment," or "operating radius," etc. A statement shall be included that no other negotiating authority set forth in 3-201 through 3-217 is available for the proposed procurement.

(c) *Exception (13)* — When this exception is proposed for use, include the following:

(i) a description of previous procurements of the item (this authority is not available for a "first-time" buy (see 3-213.2(a) and 3-213.3)); see 3-213.2(b) for examples of the use of this authority;

(ii) a statement that the additional units and replacement items of the specific makes and models of technical equipment and parts to be procured are:

(A) for tactical use;

(B) an integral part of or used in direct support of a weapon system; or

(C) for use in .... (indicate one or more of the locations named in 3-213.2(a)),

and have been adopted as standard items of supply in accordance with Departmental procedures;

(iii) the reasons for standardizing the equipment and why such standardization and interchangeability of parts are necessary in the public interest;

(iv) the results of consideration given each of the factors enumerated in 3-213.2(c) and a statement that in arriving at the determination to standardize, other user Departments and Defense Supply Agency, as applicable, have been consulted in order to insure the full benefit of the action;

(v) a statement that the standardization of the equipment will be reviewed at least once each two years to determine whether the standardization should be continued, revised or canceled (in cases where standardization of the equipment has previously received Secretarial approval, the date such approval was received and the basis for continuing such standardization); and

(vi) a statement as to whether or not the initial solicitation of bids or proposals contained the "*Notice of Possible Standardization*" clause in 7-2003.38.

(d) *Exception (14)*:

(1) If the basis for negotiation is that manufacture of the equipment requires an extended period of preparation for manufacture and its procurement

by formal advertising would result in duplication of such preparation which would unduly delay the procurement, the justification should contain statements of the technical and specialized nature of the item and substantiating data and information, clearly demonstrating such duplication of preparation for manufacture and the resulting delay of the procurement, such as the following:

(i) a description of the relationship of the proposed procurement to prior work performed by the proposed contractor, emphasizing the element of delay if the award is made to another contractor;

(ii) the associated cost information as to the magnitude of the proposed contractor's previous efforts;

(iii) the contractor's previous research and development and production contracts, including their respective total time periods and the aggregate dollar values of each kind;

(iv) the stage reached in the development or production and any other circumstances which will demonstrate the advantageous lead time of the proposed contractor;

(v) a description of such elements as preliminary engineering and development work already performed by the contractor, including the time required to perform such work, which would not be useful to or usable by any other supplier;

(vi) the contractor's ability to make important design changes, without repetition of previous engineering effort, and the delay that would arise from a new supplier having to acquire the necessary special test equipment and special tooling and to develop essential employee skills;

(vii) the minimum lead time for the proposed contractor, establishing that the lead time for any firm other than the proposed contractor would unduly delay the procurement;

(viii) the lead time, in terms of months, for other firms as to:
  (A) design and engineering;
  (B) manufacture of preproduction unit;
  (C) test and evaluation; and
  (D) acquisition of materials, including special test equipment and special tooling, and manufacture of first production equipment.

(ix) the date the requirement originated or was received by the requiring activity;

(x) the date the purchase request was received in the contract division, purchasing division, or equivalent, of the procuring or purchasing activity.

(2) If the basis for negotiation is that manufacture of the equipment requires a substantial initial investment and its procurement by formal advertising would likely result in additional cost to the Government by reason of duplication of investment, the justification should contain substantiating data and information clearly demonstrating the duplication of investment and additional cost to the Government by reason of such duplication, such as the following:

(i) a description of the type and value of the substantial investment by the proposed contractor or by the Government;

(ii) the contracts involved and the identity of any Government-furnished property;

(iii) delineation of costs of the nature described in 3–214.2(i), (ii), and (iii) (if estimates are used, so state);

(iv) the estimated costs which would be duplicated if the procurement were formally advertised; and

(v) the estimated additional costs which the Government would likely incur by reason of such duplication.

(e) *Exception (15):*

(1) When this exception is proposed for use because the bid prices received after formal advertising are unreasonable as to all or part of the requirements, include the following:

(i) invitation for bid (IFB) number and date;

(ii) the number of firms furnished invitations for bids; number responding, number (if any) rejected as being nonresponsive or determined to be not responsible, a list of the responsible bidders submitting responsive bids, and respective prices submitted;

(iii) the purchasing activity's original estimate of costs and the basis for such estimate;

(iv) a conclusive showing that the responsive bids received are unreasonable as to all or part of the requirements;

(v) if a partial award was made, an explanation thereof;

(vi) a list of the firms to be solicited (each responsible bidder who submitted a responsive bid must be included); and

(vii) a statement that if negotiation is authorized, no contract will be awarded under this authority unless the conditions enumerated in 3–215.2 are met.

(2) See 3–215.2 for procedures where there is evidence that the bid prices were not independently reached in open competition.

(f) *Exception (16)* — When this exception is proposed for use, emphasis must be placed on the need to negotiate with a particular contractor or contractors, and it must be shown clearly that such necessity arises from genuine considerations of national defense, or industrial mobilization in the event of a national emergency. The supporting data, as well as the determination and findings, must name the contractors to be kept available and clearly demonstrate that the above considerations form the basis for procurement from such contractors. Additionally, the justification shall include the following information as applicable, and such other information as may be pertinent:

(i) the specific purpose to be served (*i.e.*, for furnishing property or services in case of a national emergency, the interest of industrial mobilization in case of such emergency, or the interest of national defense in maintaining active engineering, research and development, would otherwise be subserved) in having a particular contractor, or particular contractors, available in the event of a national emergency;

(ii) the circumstances which make it necessary to keep the proposed contractors available for the purpose ((i) above) of the particular case;

(iii) if for maintaining active engineering, research and development, the circumstances which require negotiation under this authority;

(iv) the technical complexity and criticality of the item;

(v) the procurement history of the item and the firms which have produced it;

(vi) the reasons for lack of sources;

(vii) the current annual requirement and prospective needs for the item;

(viii) if for maintenance of an existing mobilization base, the contractor's loss of capability to produce the item in the quantities and within the time required by the mobilization planning if the contract is awarded to other suppliers; the specialized capabilities that will be lost, and the time that would be necessary to reaquire such capabilities in the event of a national emergency; and

(ix) when the establishment of additional source(s) is necessary to provide production capacity to meet current and emergency requirements the following:

- (A) the current annual and the mobilization requirements for the item, citing the source of, or the basis for, such planning data;
- (B) the comparison of current production capacity necessary to meet mobilization requirements; and
- (C) the hazards of relying on present sources and the time required for a new source to acquire the necessary facilities and skills and achieve the production capacity of both old and new source(s) to that necessary to meet mobilization requirements.

Part 3—Reserved

Part 4—Reserved

AUTHORIZATION FOR NEGOTIATION

Part 5—Formats for Determinations and Findings

J-500 Scope of Part. This Part contains illustrative formats for D&Fs for authority to negotiate contracts under 10 U.S.C. 2304(a)(2), (7), (8), and (10) through (16). (See Section III, Parts 2 and 3).

J-501 General. In some instances (*e.g.*, J-502(d), J-502(e) Format (A), and J-503(a) Format (B)), a more detailed example is provided to better illustrate the structure and substance of the D&Fs. Also, in certain instances (*e.g.*, J-502(a) and J-502(f), alternate statements are provided in the body of the example to demonstrate the application or use of the authority under other circumstances. Modifications as appropriate shall be made in the formats when they are used for a class of contracts. Other modifications of a minor nature may be made in individual cases, as necessary. The statutory negotiation authority is hereafter referred to as "Exception (11)," "Exception (12)," etc.

J-502 Formats for Secretarial Determinations and Findings.
(a) *Format for D & F for Exception (11).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(11).[1]

Findings

1. The____(2)____proposes to procure by negotiation experimental, developmental or research work calling for the study and investigation of plastic material, the experimental fabrication and testing of four sonar domes from such material and the submission of technical reports thereon. The proposed contract will not call for quantity production within the meaning of paragraph 3-211.3 of the Armed Services Procurement Regulation.

[Alt: ". . . proposes to procure by negotiation experimental, developmental or research work calling for the design, development, fabrication and the furnishing of five prototype fighter aircraft; design data, test, drawings and mockup; structural and fatigue test articles and components; instrumentation and contractor flight tests and demonstration; contractor-augmented support (including spares, spare parts, special support equipment, repairs and technical services); publications and miscellaneous reports. The proposed class of contracts will not call for quantity production within the meaning of paragraph 3-211.3 of the Armed Services Procurement Regulation.]

2. Procurement by negotiation of the above described services and property is necessary because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done under the proposed contract: only the ultimate objectives and the scope of the work can be outlined.

[Findings continued on next page]

Findings—continued

[Alt: (*for a class determination and findings*): ". . . because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done under the proposed class of contracts; only the ultimate objectives and scope of the work can be outlined.]

3. Use of formal advertising for procurement of the above described services and property is impracticable because it is impossible to describe in precise detail or by any definite drawings and specifications, the nature of the work to be done; only the ultimate objectives and general scope of the work can be outlined.

Determination

The proposed contract is for experimental, developmental or research work.(3)

Date ______________________ ______________________

NOTES: (1) When determinations and findings under 10 U.S.C. 2304(a)(11) are made below the Secretarial level, they shall be made in the same format and contain justification similar to that in the above example except that the words "which I hereby make as agency head" in the preamble shall be omitted.

(2) Procuring or contracting activity.

(3) When appropriate in individual cases, this determination should be limited to the particular kinds of work under the proposed contract, as such work is described in 3–211.1.

(b) *Format for D&F for Exception (12).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(12).

Findings

1. The ___(1)___ proposes to procure by negotiation ___(2)___, repair parts, engineering drawings and related data and maintenance handbooks.

2. Procurement by negotiation of the above described supplies is necessary because for reasons of military security, the supplies to be procured have been classified as confidential.

3. Use of formal advertising for procurement of the above described supplies is impracticable because formal advertising would result in public disclosure of the character of such supplies and thereby jeopardize their security classification.

Determination

The proposed contract is for supplies whose procurement should not be publicly disclosed because of their character, ingredients, or components.(3)

Date ________________________ ________________________

NOTES: (1) Procuring or contracting activity.
(2) Quantity and description of equipment.
(3) When appropriate in individual cases, this determination should be limited to supplies or to services, as the case may be; and, preferably, refer only to those words in the phrase "character, ingredients, or components" that are germane.

(c) *Format for D&F for Exception (13).*

(Military Department and Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(13).

Findings

1. The ____(1)____ proposes to procure by negotiation ____(2)____. The ____(3)____ is deemed to be technical equipment within the meaning of paragraph 3-213 of the Armed Services Procurement Regulation and is for tactical use.(4)

2. Procurement by negotiation of the above described equipment is necessary because standardization of this equipment and interchangeability of its parts are necessary in the public interest. This equipment forms an integral part of the weapon system. Its failure due to combat damage or other causes will render the weapon system inoperable. Because of the highly technical nature of this equipment, complexity of the processes involved in its manufacture, and differences in manufacturing equipment and techniques, other suppliers would produce equipment having such variation in the physical characteristics of their parts and in their performance (notwithstanding detailed specifications and rigid inspection) that standardization and interchangeability of parts would be precluded. Accordingly when replacement or repair of equipment manufactured by other suppliers becomes necessary, use of other apparently similar equipment or parts is generally impossible. Standardization of this equipment and interchangeability of its parts are necessary to (i) assure the readiness, maintainability and reliability of the equipment; (ii) materially reduce the quantity of spares and repair parts required to be carried which reduction will result in savings in time, manpower, storage space and costs; and (iii) make possible the interchange of parts among pieces of damaged equipment during combat or any other emergency.

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method may result in procurement from another supplier and thereby prevent standardization of the equipment and interchangeability of its parts.

Determination

The proposed contract is for technical equipment for which standardization and interchangeability of its parts is necessary in the public interest, and procurement thereof by negotiation is necessary to assure such standardization and interchangeability.

Date________________ ______________________________

NOTES: (1) Procuring or contracting activity.
(2) Quantity and description of equipment.
(3) Description of equipment.
(4) Where the item is not for tactical use, omit the words "tactical use" and substitute therefor: "use in [*enter one or more of the locations named in 3-213.2*]."

(d) *Format for D&F for Exception (14).*

(Military Department or Agency)

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(14).

Findings

1. The ___(1)___ proposes to procure by negotiation approximately ___(2)___ together with spares, special support equipment, engineering drawings and related data, publications and repair parts under provisioning procedures. The ___(3)___ is deemed to be of a technical or special nature within the meaning of paragraph 3-214 of the Armed Services Procurement Regulation.

2. Procurement by negotiation of the above described equipment is necessary because the equipment is so intricate and complicated that its manufacture requires a substantial initial investment and if manufactured by any supplier other than ___(4)___ , would duplicate high starting costs already borne by the Government. Starting costs such as preliminary engineering and development work and other manufacturing preparations by ___(4)___ , the developer and only producer of this equipment, have been recovered by the contractor under other contracts with the Government. Generally, such work would not be useful to or usable by any other supplier. Therefore, manufacture of this equipment by any other supplier will result in a duplication of these costs and would likely result in additional costs to the Government by reason of such duplication.

> [Alt: ". . . because manufacture of this equipment by any supplier other than ___(4)___ would result in duplication of necessary preparation which would unduly delay the procurement of the equipment. The manufacture of this equipment requires detailed familiarity with the design and related specifications as well as extensive production engineering and time consuming physical preparation. Deliveries of the equipment are required to commence ___(5)___ and be completed in _((6)_ or _(7)_). The ___(4)___ has acquired the special skills, manufacturing techniques and experience necessary to manufacture this equipment and can meet the required delivery schedule. No other supplier possessing the special skills and experience necessary to manufacture acceptable equipment in time to meet the delivery schedule is known. Accordingly, manufacture by any supplier other than ___(4)___ would require an extended period of preparation for manufacture which would delay delivery of the equipment.]

[Findings continued on next page]

AUTHORIZATION FOR NEGOTIATION

Findings—continued

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method may result in procurement from another source which would require duplication of necessary initial investment to produce this equipment and would likely result in additional cost to the Government by reason of such duplication.

[Alt: ". . . because such method may result in procurement from another source which would require duplication of necessary preparation and thereby delay the procurement of this equipment.]

Determination

The proposed contract is for equipment of a technical or specialized nature which requires a substantial initial investment to manufacture, and procurement thereof by formal advertising would likely result in additional cost to the Government by reason of duplication of investment.

[Alt: ". . . equipment of a technical or specialized nature which requires an extended period of preparation for manufacture, and procurement thereof by formal advertising would result in duplication of necessary preparation which would unduly delay the procurement of the equipment.]

[Alt: ". . . equipment of a technical or specialized nature which requires a substantial initial investment and an extended period of preparation for manufacture, and procurement thereof by formal advertising would (A) likely result in additional cost to the Government by reason of duplication of investment, and (B) result in duplication of necessary preparation which would unduly delay the procurement of the equipment.] (7)

Date ______________________________ ______________________________

NOTES: (1) Procuring or contracting activity.
(2) Quantity and description of equipment and estimated cost.
(3) Description of equipment.
(4) Name of supplier.
(5) Month and year.
(6) Number of months.
(7) Determination to be used when both conditions described in paragraph 2 of the Findings exist and both conditions are stated conjunctively.

AUTHORIZATION FOR NEGOTIATION

(e) *Formats for D&F for Exception (15).*
(i) *Format (A).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination (1) which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(15).

Findings

1. The ___(2)___ proposes to procure by negotiation 12,080 pounds of Hydrazine, Free Base.

2. Procurement by negotiation of the above described supplies is necessary because the bid prices received after formal advertising are unreasonable. In response to Invitation for Bid, ___(3)___, for the above material prepared and mailed, or delivered, to 17 prospective bidders by the ___(2)___ in accordance with the requirements of Part 2 of Section II of the Armed Services Procurement Regulation, the following responsive bids were received:

Bidder A	$8.96	per pound
Bidder B	9.25	" "
Bidder C	9.30	" "
Bidder D	9.55	" "
Bidder E	9.94	" "

One bid, which failed to conform to the delivery schedule in the Invitation for Bids, was rejected as nonresponsive. The remaining bids comply in all essential respects with the Invitation for Bids. Quantities of individual purchases of this material have been approximately 4,000 pounds. The most recent purchase, approximately one year ago, was for 3,700 pounds. Based on the unit price paid for the above quantity of 3,700 pounds, a unit price of $6.30 per pound was estimated for the proposed procurement of 12,080 pounds. All other terms and conditions were substantially identical to previous purchases. However, comparison of the lowest bid price with prices previously paid for this material, indicates that the bid prices received are unreasonable. ___(4)___ (Note: Include such other requirements contained in J-305 as may be appropriate.)

3. Use of formal advertising for procurement of the above described supplies is impracticable because bid prices received after formal advertising are unreasonable.

Determination

The proposed contract is for supplies for which bid prices received after formal advertising are unreasonable.

Date ____________________ ____________________

NOTES: (1) Where use of the authority of 10 U.S.C. 2304(a)(15) to negotiate after formal advertising is contemplated, two separate determinations and findings may be used. See 3-215. This determination and findings is an example of the first. An example of the second determination and findings follows (see format (B)).

(2) Procuring or contracting activity.

(3) Number or other identification of Invitation for Bid.

(4) In any case where a partial award has been made at bid prices considered reasonable, such fact should be included.

(ii) *Format* (*B*).

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination ____(1)____ which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(15).

Findings

1. The ____(2)____ proposes to procure by negotiation 12,080 pounds of Hydrazine, Free Base.

2. Procurement by negotiation of the above described supplies is necessary because the bid prices received after formal advertising were unreasonable. Authority to negotiate this procurement under 10 U.S.C. 2304(a)(15) was obtained from the ____(3)____. Pursuant to such authority, the Contracting Officer notified each responsive bidder of intention to negotiate and gave each a reasonable opportunity to negotiate. The following proposals were received:

Offeror A	$7.95	per	pound
Offeror B	8.35	"	"
Offeror C	8.90	"	"
Offeror D	9.10	"	"
Offeror E	9.50	"	"
Offeror F	10.10	"	"

The negotiated price of $7.95 per pound is lower than the lowest rejected bid price of any responsible bidder and is the lowest negotiated price offered by any responsible supplier.

3. Use of formal advertising for procurement of the above described supplies is impracticable because bid prices received after formal advertising were unreasonable.

Determination

The proposed contract is for supplies for which the negotiated price (A) is lower than the lowest rejected bid price of any responsible bidder and (B) is the lowest negotiated price offered by any responsible supplier.

Date ______________________ ______________________

NOTES: (1) This is an example of the second determination and findings which may be used when the authority of 10 U.S.C. 2304(a)(15) is used to negotiate after formal advertising (see 3-215). An example of the first determination and findings precedes this example (see Format (A)).

(2) Procuring or contracting activity.

(3) Identify the department Secretary and the number and date of the first determination and findings.

(f) *Format for D&F for Exception (16).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(16).

Findings

1. The___(1)___proposes to procure by negotiation___(2)___, including repair parts and maintenance manuals.

2. Procurement by negotiation of the above described equipment is necessary because its operational and reliability requirements are so critical that no known supplier other than the___(3)___has the unique skills, sophisticated production techniques, specialized plant facilities and strict quality control disciplines required for its manufacture. This equipment is a vital component of the___(4)___and its reliable operation is essential to the proper functioning of the___(4)___. It is in the interest of national defense to keep (3) available for furnishing this equipment in case of a national emergency.

[Alt. (for a class determination and findings): ". . . because the complexity of this equipment limits the sources of supply and it is in the interest of national defense that___(3)___and___(3)___be kept available for furnishing such supplies in case of a national emergency. In such event, the planned mobilization requirements for this equipment will substantially exceed the production capacity of both companies. Therefore in addition to maintaining the manufacturing facilities of both companies for emergency requirements, it is essential that their engineering and production skills be maintained in order to be available for training other companies in the manufacture of this equipment."]

3. Use of formal advertising for procurement of the above described supplies is impracticable because such method may result in procurement from another source (notwithstanding rigid evaluation of bidders' qualifications, strict manufacturing disciplines and test requirements) of equipment not meeting qualitative requirements.

[Alt. (for a class determination and findings): ". . . . because such method may result in procurement from another source and thus prevent the keeping of vital sources available for mass production in the event of a national emergency."]

Determination

It is in the interest of national defense that the___(3)___be kept available for furnishing such supplies in the event of a national emergency, and procurement by negotiation is necessary to that end.

[Alt. (for a class determination and findings): "It is in the interest of industrial mobilization that the___(3)___and the___(3)___be kept available for furnishing such supplies in the event of a national emergency, and procurement by negotiation is necessary to that end."]

Date____________________ ______________________________

NOTES: (1) Procuring or contracting activity.
(2) Quantity and description of equipment and estimated cost.
(3) Name of supplier.
(4) Weapon, weapon system or other end item.

BEST DOCUMENT AVAILABLE

AUTHORIZATION FOR NEGOTIATION

J-503 Formats for Determinations and Findings Below the Secretarial Level.

(a) *Formats for D&F for Exception (2).*
(i) *Format (A).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(2), as implemented by paragraph 3-202.2(ii) of the Armed Services Procurement Regulation.

Findings

1. The____(1)____ proposes to procure by negotiation two steam generator sets required for the USS______________. The estimated cost of the proposed procurement is______________.

2. Procurement by negotiation of the above described equipment is necessary because the USS________ is unable to perform its operational tasks until this equipment is received and installed. The USS __________ is assigned, as an active unit, to the____(operating group)____.

3. Use of formal advertising for procurement of the above described equipment is impracticable because such method would delay installation of the equipment by approximately____(2)____ and prevent the USS__________ from performing its mission during such period.

Determination

The proposed contract is for supplies for which the public exigency will not permit the delay incident to formal advertising.

Date____________________ ____________________________

NOTES: (1) Procuring or contracting activity.
(2) Time, in days or months as appropriate.

(ii) Reserved.

(b) *Format for D&F for Exception (7).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(7).

Findings

1. The ____(1)____ proposes to procure by negotiation ____(2)____.

2. ______________(3)______________.

3. The use of formal advertising will not be feasible or practicable in this instance because ______________(4)______________.

Determination

The use of a negotiated contract is justified because the contemplated procurement is for medical supplies for which procurement by formal advertising is not feasible and practicable.

Date ______________________________ ______________________________________

NOTES: (1) Procuring or contracting activity.
(2) Description of supplies or equipment, quantity, and estimated cost.
(3) Include a statement as to the type of item(s); *e.g.*, medicine, medical supplies, or medical equipment.
(4) Include the specific reason(s) why the use of formal advertising is not feasible or practicable.

(c) *Format for D&F for Exception (8).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(8).

Findings

1. The____(1)____proposes to procure by negotiation____(2)____for authorized resale at____(3)____.

2. Procurement by negotiation of the above described property is necessary because only the brand name specified above will satisfy customer preference for this item.

3. Use of formal advertising for procurement of this item is impracticable because the property is available only from____(4)____, the manufacturer's sole distributor.

Determination

The proposed contract is for property for authorized resale.

Date________________________ ________________________________

NOTES: (1) Procuring or contracting activity.
(2) Description, including brand name, and quantity, and estimated cost of item being purchased.
(3) Identify sales outlet(s).
(4) Name of distributor.

(d) *Formats for D&F for Exception (10).*

(i) *Format (A).*

(Military Department and Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 USC 2304(a)(10), as implemented by paragraph 3-210.2(i) of the Armed Services Procurement Regulation.

Findings

1. The____(1)____ proposes to procure by negotiation ____(2)____. This equipment is special support equipment for the maintenance of the____(3)____.

2. Procurement by negotiation of the above described special support equipment is necessary because the manufacturer must have a detailed knowledge of the basic equipment to be supported. The special support equipment to be procured must be specially designed to be compatible with the basic equipment.

3. Use of formal advertising for procurement of the above described special support equipment is impracticable because only____(4)____, the designer, developer and sole manufacturer of the basic equipment, is sufficiently familiar with the design and operational characteristics of the basic equipment to furnish the special support equipment required.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date________________________ ________________________________

NOTES: (1) Procuring or contracting activity.

(2) Quantity and description of equipment and estimated cost.

(3) Describe the basic equipment involved.

(4) Name of supplier.

AUTHORIZATION FOR NEGOTIATION

(ii) *Format* (*B*).

(Military Department or Agency)

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 USC 2304(a)(10), as implemented by paragraph 3-210.2(vii) of the Armed Services Procurement Regulation.

Findings

1. The ___(1)___ proposes to procure by negotiation technical non-personal services in connection with the assembly, installation, or servicing of the ___(2)___, The ___(2)___ is deemed to be equipment of a highly technical or specialized nature within the meaning of paragraph 3-210.2(vii) of the Armed Services Procurement Regulation.

2. Procurement by negotiation of the above described services is necessary because ___(3)___ is the only manufacturer of this equipment and is therefore the only contractor qualified to furnish the required services.

3. Use of formal advertising for procurement of the above described services is impracticable because no other supplier is qualified to furnish the services required.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ____________________ ____________________

NOTES: (1) Procuring or contracting activity.
(2) Description of equipment and estimated cost.
(3) Name of supplier.

(iii) *Format (C).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 USC 2304(a)(10), as implemented by paragraph 3-210.2(xiii) of the Armed Services Procurement Regulation.

Findings

1. The____(1)____ proposes to procure by negotiation____(2)____ .

2. Procurement by negotiation of the above described equipments is necessary because only a developmental model not wholly representative of the equipment to be procured and a performance specification are available. Some additional design and engineering effort by the contractor, including the preparation of design data and quality assurance procedures, will be necessary. The performance specification is not sufficiently detailed to permit advertised bidding. The developmental model was constructed by____(3)____ primarily on the basis of technical contributions from several sources, Government and industry. The design data available are incomplete, not sufficiently detailed and are largely uncoordinated.

3. Use of formal advertising for procurement of the above described equipment is impracticable because it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the equipment.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date____________________ ________________________

NOTES: (1) Procuring or contracting activity.
(2) Quantity and description of equipment and estimated cost.
(3) Name of activity, Government or industry.

AUTHORIZATION FOR NEGOTIATION

(iv) *Format (D).*

(Military Department or Agency)
Determination and Findings
Authority To Negotiate an Individual Contracts

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 USC 2304(a)(10), as implemented by paragraph 3-210.2(xv) of the Armed Services Procurement Regulation.

Findings

1. The ____(1)____ proposes to procure by negotiation certain parts or components as replacement parts in support of the ____(2)____. The latter equipment was specially designed and manufactured by ____(3)____. The estimated cost of the proposed procurement is ________.

2. Procurement by negotiation of the parts or components required as replacement parts in support of the equipment described above is necessary because fully adequate data and quality assurance procedures are not available and cannot reasonably be made available. Only the above named designer and manufacturer of the equipment is capable of furnishing parts or components which assure the requisite safe, dependable and effective operation of the equipment.

3. Use of formal advertising is impracticable because the data available are not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

Determination

The proposed contract is for property or services for which it is impracticable to obtain competition by formal advertising.

Date ____________________ ____________________

NOTES: (1) Procuring or contracting activity.
(2) Description of the basic equipment for which the replacement parts or components are to be procured.
(3) Name of designer and manufacturer.

AUTHORIZATION FOR NEGOTIATION

Part 6—Cost, Cost-Plus-Fixed Fee, or Incentive Type Contracts

J-601 Format for Determination and Findings With Respect to Use of Cost, Cost-Plus-Fixed-Fee, or Incentive Type Contracts. Set forth below is a format for the D&Fs to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (see 3-303(a)(iii)). The format may be modified as appropriate.

(Military Department or Agency)
Determination and Findings
Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a____(1)____basis.

Findings

1. The____(2)____proposes to enter into a____(1)____contract for the procurement of____(3)____at an estimated cost of $____(4)____.

2. The work to be performed is____(5)____.

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract. (6)

> [Alt: The use of the proposed type of contract is likely to be less costly than other methods.] (6)
>
> [Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method.] (6)

2. The estimated cost of the proposed contract is $____(4)____. (7)

Date ______________________ ______________________

NOTES:
(1) Enter type of contract to be used, *i.e.*, fixed-price incentive, cost-plus-incentive-fee, cost, or cost-plus-fixed-fee.
(2) Procuring or contracting activity.
(3) Brief description of supplies or services.
(4) Enter amount to nearest thousand.
(5) Describe the nature of the work to be performed and set forth the facts (for the type of contract proposed, see the pertinent paragraphs of ASPR Section III, Part 4) that show why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.
(6) Use the determination responsive to the findings. See Note (5) above.
(7) Determination to be made when a cost-plus-fixed-fee contract is proposed.

AUTHORIZATION FOR NEGOTIATION

Part 7—Waiving the Submission of Cost or Pricing Data

J-701 Format for Determination and Findings With Respect To Waiving the Submission of Cost or Pricing Data and Certification Thereof. Set forth below is a format for the D&Fs to be made by the Secretary of a Department with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306(f), and for waiving the inclusion of the clauses required by 7-104.29 and 7-104.42 (see 3-302(viii)). The format may be used also for the D&Fs for such waiver made by the Head of the Procuring Activity for contracts with foreign governments or agencies thereof (see 3-303(a)(i)).

(Military Department or Agency)

Determination and Findings

Authority To Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by ASPR 3-807.3(a).[1]

Findings

1. The ____(2)____ proposes to enter into a contract with ____(3)____ for the procurement of ____(4)____.

2. Pursuant to ASPR 3-807.3(a), the proposed contractor is required to submit cost or pricing data as described in ASPR 3-807.3(e) together with the certificate set forth in ASPR 3-807.4. However, waiver of submission of the cost or pricing data described below is justified for the reasons indicated: ____(5)____ .

Determination

1. The requirement for submission of cost or pricing data for the proposed procurement may be waived.

Date__________________ __________________

NOTES: (1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a procuring activity".

(2) Procuring or contracting activity.

(3) Name of supplier.

(4) Brief description of supplies or services.

(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e. limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed procurement an exceptional case and state the reasons which justify the proposed waiver.

APPENDIX K—PRE-AWARD SURVEY PROCEDURES

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APPENDIX K

PRE-AWARD SURVEY PROCEDURES

Part 1—Introduction

K–100 Scope of Appendix. This Appendix establishes the procedure for conducting pre-award surveys (except for construction contracts) by the contract administration office.

K–101 Applicability of Appendix. This Appendix is applicable to all activities of the Department of Defense concerned with pre-award surveys.

K–102 Definitions. As used in this Appendix, the following terms have the meanings set forth below.

K–102.1 *Monitor* means the person designated to administer the pre-award survey from the receipt of the request through the issuance of the final report.

K–102.2 *Team coordinator* means the person designated by the monitor to coordinate the on-site survey, make arrangements for plant visits, and conduct team conferences as necessary before, during, or after the plant visit.

K–102.3 *Pre-Award Survey Review Board* means a board established to review and approve or disapprove pre-award survey reports.

PRE-AWARD SURVEY PROCEDURES

Part 2—General Provisions

K-200 Scope of Part. This Part sets forth the procedure for requesting and conducting a pre-award survey, and applicable administrative controls.

K-201 Procedure for Requesting Pre-Award Survey.

(a) The contracting officer shall request a pre-award survey on *Pre-Award Survey of Offeror — General* (*DD Form 1524*) (*see F-200.1524*), indicating in Section III thereof, the scope of the survey desired. Factors requiring emphasis not enumerated in Section III should be listed by the purchasing office under item "14" of that Section. The "*Walsh-Healey Public Contracts Act*" block of Section I is for information purposes only. If information is needed on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block "14" of Section III. A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of the Form. A survey may be requested by telephone but shall be immediately confirmed on DD Form 1524. Unless previously furnished, a copy of the solicitation, and such drawings and specifications as deemed necessary by the purchasing office, shall be supplied with the pre-award survey request.

(b) The purchasing office shall forward any information indicating previous unsatisfactory contract performance with the pre-award survey request, except where it is known that the contract administration office already has this information.

(c) Purchasing offices shall forward request for pre-award surveys in an original and three copies to the appropriate office shown in the DoD Directory of Contract Administration Services Components, DoD 4105.59-H.

K-202 Scope of Survey.

(a) A complete survey encompasses investigation, to the extent applicable to the proposed contract, of the factors listed in Section III of DD Form 1524, together with other requirements of special inquiry as requested by the purchasing office, and submission of appropriate findings thereon.

(b) A partial survey encompasses investigation of those factors referenced in (a) above which are specifically requested by the purchasing office and any other factors considered advisable by the contract administration office conducting the survey, and submission of appropriate findings thereon.

(c) The contract administration office may execute and transmit to the purchasing office a short form pre-award survey report in those cases where sufficient current favorable information is available to recommend award without a formal survey. The DD Form 1524 will be used as the survey report in accordance with procedures outlined in K-203.1(d). If the purchasing office has reason to need additional information on contractor capability, they may so advise the contract administration office and a detailed survey report will be provided.

K-203 Contract Administration Office Procedure.

K-203.1 *General.*

(a) Pre-award surveys will be conducted by the contract administration office within the normal time frame of seven working days after receipt of request and in the detail requested by the purchasing office. In unusual procurement situations, reports of such surveys may be requested in a shorter time if the situation so warrants. Qualified specialists responsible for the factors referenced in K-202(a) shall participate as required.

(b) Representatives of the purchasing office and other activities shall participate in pre-award surveys when requested by the contract administration office or as desired by the purchasing office.

(c) If the pre-award survey cannot be accomplished within the time allowed, the purchasing office shall be so notified. If the date is not extended, the contract administration office shall supply a definite recommendation by the date required, based on the material at hand or developed by that time. The basis for the recommendation and the factors for which no data or only partial data could be obtained, shall be indicated.

(d) When the contract administration office possesses sufficient current favorable information about an offeror to recommend complete award without performing a formal survey, a short form pre-award report may be executed and forwarded to the purchasing office unless the purchasing office has requested additional information as required by K-202. The "short form" pre-award survey report will consist of only DD Form 1524. Sections III and IV of the DD Form 1524 will be completed and the following statement will be stamped in the *Remarks* portion of Section III:

SHORT FORM PRE-AWARD REPORT
Pursuant to ASPR K-202(c),
complete award is recommended.

K-203.2 *Designation of Pre-Award Survey Monitor*. An individual with each contract administration office performing pre-award surveys shall be designated as the pre-award survey monitor. The monitor shall administer the pre-award survey from the receipt of the request through the issuance of the final report to assure appropriate coverage and maximum efficiency. The monitor shall:

(i) receive all incoming pre-award survey requests;

(ii) ascertain whether the prospective contractor is included on the Consolidated List of Debarred, Ineligible, and Suspended Contractors for any reason, including those attributable to equal employment opportunity practices. (Where the prospective contractor is so listed, the purchasing office shall be promptly advised and the pre-award survey shall not be completed, unless specifically requested by the purchasing office);

(iii) compare the survey request with the requirements of the solicitation;

(iv) determine the need for an on-site survey after reviewing the type and quantity of items or services involved; previous experience with the firm; technical and schedule requirements; and the extent of other information currently available (If an on-site survey has been requested and sufficient data is already available in the contract administration office, the monitor shall ask the purchasing office whether an on-site survey must nevertheless be conducted, and for the specific elements to be covered.);

(v) determine and advise the organizational segments of the contract administration office (*e.g.*, Production, Quality Assurance, and Contract Administration), that will furnish team members;

(vi) Provide team members the following information—
  (A) the date on which the information is required from each organizational segment;
  (B) the portion of the survey for which each organizational segment is responsible;
  (C) whether an on-site survey of the prospective contractor's facility is contemplated. (This is subject to later modification based on information supplied by team members.);
  (D) any special terms and conditions noted in the solicitation; and
  (E) any other information or guidance the particular request may require;

(vii) after discussion with appropriate organizational segments, designate the team coordinator;

(viii) arrange for required audit and other external assistance (For example, in those cases where contract award is dependent upon the contractor having an adequate cost accounting system for proper post-award administration of the contract, the cognizant audit agency shall be responsible for the system review, evaluation, and conclusive recommendation. DD Form 1524-4 is provided for this purpose.);

(ix) Coordinate any purchasing office participation in the pre-award survey;

(x) receive and review reports of the individual team members for completeness and adequate substantiation;

(xi) resolve questions regarding technical details with responsible specialists;

(xii) report those applicable procedures of the prospective contractor which have been reviewed by Government personnel (*e.g.*, purchasing system, estimating system, accounting system, control of Government property, and quality program and procedures for controlling the application of restrictive markings on technical data) (see 9-202.3(c)(2)); and

(xiii) assemble all necessary survey data into a report, including a recommendation as to award, and submit it to the Chairman of the Pre-Award Survey Review Board.

K-203.3 *Designation and Responsibilities of Team Coordinator and Members.*

(a) When an on-site survey by a team is necessary, members should include specialists qualified to evaluate all appropriate phases of the firm's capabilities. The team coordinator shall:

(i) arrange for the team's visit to the site;

(ii) conduct team conferences for the purpose of—
  (A) arriving at uniform interpretations prior to holding discussions with the prospective contractor's management;
  (B) briefing team members on their interviews and discussions with officials of the firm prior to making an on-site survey. (Members shall not make reference or comment relative to the possibility that the award will or will not be made to the prospective contractor. This does not preclude discussion with a prospective

contractor of questionable areas which in the opinion of the team member require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.); and

(C) arranging for discussions among members during and after the on-site survey to assure that evaluations by individual specialists are integrated, coordinated, and complete; and

(iii) otherwise direct the efforts of the team.

(b) When an on-site survey is required for only one aspect of the prospective contractor's capability, a qualified specialist will be designated to conduct the on-site portion of the survey. One specialist may be designated to investigate more than one aspect when it is within his capability.

K-203.4 *Pre-Award Survey Review Board.*

(a) A Pre-Award Survey Review Board shall be formally established to review and approve survey reports prior to transmittal to the purchasing office.

(b) The Board shall be composed of senior specialists from each of the major organizational segments of the contract administration office normally concerned with pre-award surveys, one of whom shall be designated Chairman. Flexibility of membership shall be provided by designating alternates for membership and by establishing the criteria or conditions governing the need for occasional special technical representation. Membership on the Board shall be in addition to the members' regular duties.

PRE-AWARD SURVEY PROCEDURES

Part 3—Survey

K-300 Steps for Survey Performance. The three steps in performing a pre-award survey are the:

(i) preliminary analysis;
(ii) development and evaluation of information; and
(iii) preparation and review of the pre-award survey report.

K-301 Preliminary Analysis. The request (DD Form 1524, Sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be investigated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

K-302 Development of Information.

(a) *Review of Available Data.* The information already available in the contract administration office pertaining to the prospective contractor and his past performance shall be reviewed. Prior pre-award survey reports shall be examined and considered in support of pre-award survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(b) *Development of Additional Data.*

(1) When appropriate, the contract administration office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(2) An on-site survey shall be performed when required by 1-905.4(a), or when sufficient information is not developed as a result of (a) and (b)(1) above.

(3) A narrative discussion shall be referenced in Section III of DD Form 1524 and appended to the form covering each factor investigated. This narrative shall include detailed discussion supporting both satisfactory and unsatisfactory conditions and shall include reasons for all stated conclusions. When review discloses previous unsatisfactory contractor performance in any regard, the pre-award survey shall specifically cover the extent to which action has been taken or planned by the contractor to avoid repetition. Lack of evidence that the contractor was responsible for a failure to meet past contractual requirements does not necessarily indicate satisfactory performance. A persistent pattern of the contractor's need for costly and burdensome Governmental assistance (engineering, inspection, testing) that was provided in the Government's interest but not contractually required, shall be treated in the pre-award survey as an element for separate narrative discussion to be appended to the Form.

(4) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the CAO shall as a minimum obtain and evaluate:

(i) an itemized list of the required resources;
(ii) a planned method of acquisition; and
(iii) a schedule for acquisition of resources.

Failure to meet commitments on previous contracts shall be documented in the current pre-award survey report and considered in the final recommendation.

K-303 On-Site Surveys.

K-303.1 *Interview, Investigation and Review.*

(a) *General.* An on-site survey will consist of an interview with representatives of the prospective contractor and, normally, an investigation of his resources and procedures.

(b) *Interview With Management.* Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as necessary to reflect the soundness and reputation of the firm's operation.

(1) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(2) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with prospective contractors to assure that they understand its requirements, including its technical aspects such as drawings, specifications, prototype, technical data and provisioning technical documentation (including automated data processing requirements when appropriate), testing, and packaging, and Government's right to use technical data in accordance with the terms of the solicitation (see clauses in 7-104.9(a), paragraph (d), and 7-104.9(p)). Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the monitor by the team coordinator. The monitor shall, in turn, promptly advise the purchasing office.

(c) *Investigation of Resources and Review of Procedures.* The resources which the prospective contractor intends to utilize shall be inspected, analyzed, and compared with his overall plans for performing. His procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(d) *Specific Factors To Be Considered.* In the course of developing information, those factors described in K-303.2 through K-303.4 below and all others needed to provide the report and recommendations in the detail and to the extent required by the purchasing office shall be considered.

K-303.2 *Production.*

(a) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the product(s) in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to such resources.

(b) *Obtaining the Production Plan.* The prospective contractor's production plan for meeting the delivery schedule specified in the proposed contract shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule of the proposed contract. The controls which will be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(c) *Ascertaining Production Resources*. The information necessary to prepare DD Form 1524–1 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(d) *Relating Production Plans to Production Resources*. When necessary, representatives of the prospective contractor shall be requested to advise how the production resources described in Sections III, IV, V, and VI of DD Form 1524–1 will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contract administration office to:

(i) conclude whether the resources which the prospective contractor is planning to use are suitable for the job;
(ii) determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;
(iii) determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones;
(iv) conclude whether achievement of the principal milestones will result in timely delivery.

K-303.3 *Quality Assurance*.

(a) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function which reports to some other organizational segment (such as Production) instead of top management may be undesirable. The experience of the company inspection or quality control personnel with the same or similar items shall be evaluated.

(b) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, the following areas shall be reviewed:

(i) methods currently utilized to control product quality as reflected by a documented or verifiable inspection system or quality program plan;
(ii) personnel on hand and available (report both trained and untrained);
(iii) inspection and test equipment on hand and available;
(iv) quality, identification, and storage of materials;
(v) physical arrangement of plant;
(vi) tool and gauge control; and
(vii) test and inspection records.

PRE-AWARD SURVEY PROCEDURES

K-303.4 *Financial.*

(a) *General.* The normal procedure for determining a prospective contractor's financial capability shall be initial pre-survey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required. The approach to financial analysis shall be consistent with the basic policies and regulations outlined in Appendix E.

(b) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability (DD Form 1524-3) include the following:

(1) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(i) rates and ratios;
(ii) working capital as represented by current assets over current liabilities; and
(iii) financial trends such as net worth, sales and profit.

(2) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(3) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

K-304 Evaluating Data and Preparing the Report.

(a) *Findings of Team Members.* When the required information has been gathered, each individual participant shall analyze it and evaluate the prospective contractor's capability to perform with respect to the functional element(s) investigated. Each participant shall then provide his findings to the monitor on the appropriate Part(s) of DD Form 1524 or an attachment thereto. Where a negative reply is recorded, or where doubt exists, an explanation must substantiate the entry. If a detailed analysis is needed or additional significant information is pertinent, the Form should be supplemented by a narrative report.

(b) *Monitor's Evaluation and Recommendation.* Based on all the information received from the team members, the monitor shall thoroughly review and evaluate the findings and recommendations, and forward the report to the Chairman of the Review Board with (i) a summary of his findings, and (ii) his recommendation concerning award. The recommendation shall be supported by a statement of justification and shall, when the prospective contractor is a small business concern, be coordinated with the small business specialist at the contract administration office.

(c) *Review Board Action.* Upon receipt of each pre-award survey report, the Chairman of the Review Board shall determine the extent of Review Board action. The requirements of K-203.4 above may be satisfied at the discretion of the Chairman by any of the following:

(i) action by the Chairman alone;
(ii) informal contact by the Chairman with one or more of the Board members; or

(iii) formal action by the entire Board.

(d) *Final Actions*. Following the action by the Review Board, the monitor shall forward the report direct to the purchasing office. When advance reports are made by telegraphic communication or telephone, they shall be confirmed by mail without delay. The monitor shall follow up on any requirements for the submission of supplemental reports.

DAC #76-35 30 APRIL 1982

APPENDIX L

DOD FREEDOM OF INFORMATION ACT PROGRAM

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APPENDIX L

DEPARTMENT OF DEFENSE DIRECTIVE 5400.7

of

March 24, 1980

SUBJECT: DoD Freedom of Information Act Program

REPRINT - Changes 1, 2, and 3 have been incorporated.

March 24, 1980#
NUMBER 5400.7

ASD(PA)

Department of Defense Directive

SUBJECT: DoD Freedom of Information Act Program

References: (a) DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," February 14, 1975 (hereby canceled)
(b) Title 5, United States Code, Section 552
(c) DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980
(d) Public Law 86-36, "National Security Information Exemption"
(e) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

1. This Directive reissues reference (a); establishes policies and procedures for the implementation of the DoD Freedom of Information Act (FOIA) Program under reference (b); and delegates authorities and responsibilities for the effective administration of the program.

2. This Directive also authorizes, in accordance with reference (c), the publication of DoD 5400.7-R, the single DoD regulation on the FOIA Program.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense (OSD) and their administrative support agencies, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Communications Agency (DCA), Defense Contract Audit Agency (DCAA), Defense Intelligence Agency (DIA), Defense Investigative Service (DIS), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA). For the purpose of this Directive, OSD, OJCS, the Unified Commands, and OSD administrative support agencies are considered one "DoD Component." The other DoD Components referred herein are the Military Departments, DCA, DCAA, DIA, DIS, DLA, DMA, and DNA.

2. The National Security Agency records are subject to the provisions of this Directive, unless the records are exempt under reference (d).

#First amendment (Ch 1, 4/11/80)
#Second amendment (Ch 2, 4/24/80)
#Third amendment (Ch 3, 12/3/80)

C. DEFINITIONS

*** The terms used in this Directive are defined in DoD 5400.7-R, December 1980. ***

D. POLICY

It is the policy of the Department of Defense to:

1. Promote public trust by making the maximum amount of information available to the public on the operation and activities of the Department of Defense, consistent with DoD's responsibility to ensure national security.

2. Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

*** 3. Make available, under the procedures established by Chapters IV, V, and ***
*** VI of DoD 5400.7-R, those records that are requested by a member of the general ***
public who cites the FOIA.

4. Answer promptly all other requests for information, records, objects, and articles under established procedures and practices.

5. Release records to the public, unless those records are exempt from ***
*** mandatory disclosure as outlined in Chapter III of DoD 5400.7-R.

6. Process requests by individuals for access to records about themselves under the Privacy Act procedures as implemented by DoD Directive 5400.11 (reference (e)) or procedures outlined in this Directive when they are more advantageous to the requester.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Public Affairs) (ASD(PA)) shall:

a. Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

b. Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

c. Administer internally the FOIA Program for the OSD, the OJCS and, as an exception to DoD Directive 5100.3 (reference (f)), the Unified Commands (the Specified Commands remain under the Military Departments for FOIA matters).

d. As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities identified in ASD(PA) supplementing instructions.

2. The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this Directive.

#First amendment (Ch 3, 12/3/80)

3. **Heads of DoD Components** shall:

a. Publish in the Federal Register any instructions necessary for the internal administration of this Directive within a DoD Component that are not prescribed by this Directive or by other issuances of the ASD(PA). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) (reference (b)) will be published in accordance with DoD Directive 5400.9 (reference (g)).

b. Conduct training on the provisions of this Directive for officials and employees who implement the FOIA.

*** c. Submit the reports prescribed in Chapter VII of DoD 5400.7-R. ***

d. Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the Federal Register, the records specified in 5 U.S.C. 552(a)(2) (reference (b)) unless such records are published and copies are offered for sale.

e. Maintain and make available for public inspection and copying current indices of these records.

F. INFORMATION REQUIREMENTS

*** The reporting requirements in Chapter VII of DoD 5400.7-R have been assigned Report Control Symbol DD-PA(TRA&A) 1365. ***

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Office of the Assistant Secretary of Defense (Public Affairs) within 120 days.

W. Graham Claytor, Jr.

W. Graham Claytor, Jr.
Deputy Secretary of Defense

*** Enclosures - 1 ***
References

#First amendment (Ch 3, 12/3/80)

BEST DOCUMENT AVAILABLE

__REFERENCES__, Continued

(e) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding their Personal Records," August 4, 1975
(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980
(g) DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," December 23, 1974

*** ***

#First amendment (Ch 3, 12/3/80)

APPENDIX L

DEPARTMENT OF DEFENSE REGULATION 5400.7-R

DOD FREEDOM OF INFORMATION ACT PROGRAM

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

PUBLIC AFFAIRS

5400.7-R

8 NOV 1980

FOREWORD

This regulation is issued under the authority of DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

It is effective immediately and is mandatory for use by all DoD Components listed at enclosure 2. Heads of DoD Components may elect to issue instructions deemed essential to the accommodation of perceived requirements peculiar to respective Components. Any such instruction may not conflict with the provisions of this regulation.

This regulation incorporates the provisions of enclosures 2 through 7 of DoD Directive 5400.7, March 24, 1980.

Recommendations for amendments shall be forwarded through appropriate channels to Director, Freedom of Information and Security Review, who is authorized to approve and issue amendments to this regulation. Recommendations should be addressed to:

Director
Freedom of Information and Security Review
Office of the Assistant Secretary of Defense (Public Affairs)
Room 2C757, Pentagon
Washington, D. C. 20301

Thomas B. Ross

Thomas B. Ross
Assistant Secretary

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DoD FREEDOM OF INFORMATION ACT PROGRAM

CHAPTER I

GENERAL PROVISIONS

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1-100 References

(a) Title 5, United States Code, Section 552
(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980
(c) Public Law 86-36, "National Security Information Exemption"
(d) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding Their Personal Records," August 4, 1975
(e) through (u), see enclosure 1

Section 2

PURPOSE AND APPLICABILITY

1-200 Purpose

The purpose of this Regulation is to provide policies and procedures for the DoD implementation of the Freedom of Information Act (reference (a)) and reference (b) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Regulation incorporates and amplifies enclosures 2 through 7 of DoD Directive 5400.7 (reference (b)).

1-201 Applicability

a. This Regulation applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 2.

b. The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86-36 (reference (c)).

BEST DOCUMENT AVAILABLE

Section 3

DoD PUBLIC INFORMATION

1-300 Public Information

The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA and denial would serve a significant, legitimate government purpose. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

1-301 Control System

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested.

Section 4

DEFINITIONS

1-400 Definitions

As used in this Regulation, the following terms and meanings shall be applicable.

1-401 FOIA Request

A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400. , this Regulation, or DoD Component supplementing regulations or instructions.

1-402 Agency Record

a. The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

b. The following are not included within the definition of the wo[illegible]cord":

1. Library and museum material made, acquired, and preserved solely for reference or exhibition.

2. Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

3. Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

4. Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

5. Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

6. Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

7. Information stored within a computer for which there is no existing computer program or printout.

c. A record must exist and be in the possession or control of Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

1-403 DoD Component

An element of the Department of Defense, as defined in 1-201, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority.

1-404 Initial Denial Authority

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

1-405 Appellate Authority

The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

1-406 Administrative Appeal

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Section 5

POLICY

1-500 Compliance with the Freedom of Information Act

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

1-501 Openness with the Public

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

1-502 Avoidance of Procedural Obstacles

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

1-503 Prompt Action on Requests

When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by DoD Directive 5400.11 (reference (d)), outlined in this Regulation, provided such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

1-504 Use of Exemptions

Records that may be withheld under the exemptions outlined in Chapter III of this Regulation shall be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

1-505 Public Domain

Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

1-506 Creating a Record

A record must exist and be in the possession or control of the Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with paragraph 6-101.

1-507 Description of Requested Record

a. Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect.
* The defect should be highlighted in a specificity letter, asking the *
* requester to provide the type of information outlined below in paragraph *
* 1-507b of this regulation. Components are not obligated to act on the *
* request until the requester responds to the specificity letter. *

#First amendment (Ch 1, 2/24/81)

When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

b. The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

1. Category I is file-related and includes information such as type of record -- memorandum, title, index citation, subject area, date the record was created and originator.

2. Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

c. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

d. The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

e. The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

1-508 Referrals

a. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

b. Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component that was consulted. Referred records shall only be identified to the extent consistent with security requirements.

c. A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

d. A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record that the DoD Component that created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

e. Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

f. DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

g. Agencies outside the Department of Defense that are subject to the FOIA:

1. A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise the component must respond to the request.

2. A DoD Component shall not honor any FOIA request for investigative, intelligence or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

h. To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

1-509 Fee Assessment

a. Fees may not be used to discourage requests, and to this end FOI fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in Chapter VI of this Regulation.

b. In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

1. If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

2. If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

3. If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

4. Components may require payment of all or a portion of estimated fees before processing a request.

5. Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

1-510 Authentication

Records provided under this Regulation shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

1-511 Unified and Specified Commands

a. The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (e)); it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this adminstrative requirement are outlined in Appendix A.

b. The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

1-512 Records Management

FOIA records shall be maintained and disposed of in accordance with DoD Component disposition instructions and schedules.

CHAPTER II

FOIA READING ROOMS

Section 1

REQUIREMENTS

2-100 Reading Room

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Chapter VI of this Regulation.

2-101 Material Availability

The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

a. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

b. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

c. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

1. Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

2. Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Section 2

INDEXES

2-200 "(a)(2)" Materials

a. Each DoD Component shall maintain in each facility prescribed in paragraph 2-100 an index of materials described in paragraph 2-101 that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

b. Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Chapter VI of this Regulation.

c. Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

2-201 Other Materials

a. Any available index of DoD Component material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

b. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

CHAPTER III

EXEMPTIONS

Section 1

GENERAL PROVISIONS

3-100 General

Records that meet the exemption criteria in Section 2 of this Chapter may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to an FOIA request.

3-101 Significant and Legitimate Government Purpose

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Regulation, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

Section 2

EXEMPTIONS

3-200 FOIA Exemptions

The following types of records may be withheld in whole or in part from public disclosure unless otherwise precribed by law.

Number 1. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoDD 5200.1-R (reference (g)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoDD 5200.1-R, Section 2-204f apply.

Number 2. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

a. Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

b. Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

Number 3. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

a. National Security Agency Information Exemption, P.L. 86-36, Section 6 (reference (c)).

b. Patent Secrecy, 35 U.S.C. 181-188 (reference (h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

c. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (i)).

d. Communication Intelligence, 18 U.S.C. 798 (reference (j)).

Number 4. Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

c. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

e. Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

Number 5. Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

a. Examples include:

1. The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

2. Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

3. Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

4. Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

5. Trade secret or other confidential research development, or commerical information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

6. Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney - client privilege.

7. Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

b. If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

c. Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

d. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

e. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

a. Examples of other files containing personal information similar to that contained in personnel and medical files include:

1. Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

2. Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

b. In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

c. Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)).

d. A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

Number 7. Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

a. This exemption applies, however, only to the extent that release of a record or portion of a record would:

1. Interfere with enforcement proceedings.

2. Deprive a person of the right to a fair trial or to an impartial adjudication.

3. Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

4. Disclose the identity of a confidential source.

5. Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

6. Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

7. Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

b. Examples include:

1. Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

2. The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

3. Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence

investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

c. The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference k)) is not diminished.

d. When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)).

Number 8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

Number 9. Those containing geological and geophysical information and data (including maps) concerning wells.

CHAPTER IV

FOR OFFICIAL USE ONLY

Section 1

GENERAL PROVISIONS

4-100 General

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

4-101 Prior FOUO Application

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

4-102 Historical Papers

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

4-103 Time to Mark Records

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

4-104 Distribution Statement

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 (reference 1)) shall bear that statement and shall not be marked FOUO.

Section 2

MARKINGS

4-200 Location of Markings

a. An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

b. Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

c. Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

d. Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

e. FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

> This document contains information
> EXEMPT FROM MANDATORY DISCLOSURE
> under the FOIA. Exemptions ..... apply.

Section 3

DISSEMINATION AND TRANSMISSION

4-300 Release and Transmission Procedures

Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

b. DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (m)). Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1 (reference (n)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

4-301 Transporting FOUO Information

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

4-302 Electrically Transmitted Messages

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) (reference (o)) for FOUO information.

Section 4

SAFEGUARDING FOUO INFORMATION

4-400 During Duty Hours

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

4-401 During Nonduty Hours

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of P.L. 86-36 (reference (c)) shall meet the safeguards outlined in any system notice for that group of records.

Section 5

TERMINATION, DISPOSAL AND UNAUTHORIZED DISCLOSURES

4-500 Termination

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

4-501 Disposal

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. CH 33 (reference (p)), as implemented by DoD Component instructions concerning records disposal.

4-502 Unauthorized Disclosure

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

CHAPTER V

RELEASE AND PROCESSING PROCEDURES

Section 1

GENERAL PROVISIONS

5-100 Public Information

a. Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

1. The record is subject to one or more of the exemptions in Chapter III of this Regulation, and a significant and legitimate government purpose is served by withholding it.

2. The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

3. The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

b. Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

5-101 Requests from Private Citizens

The provisions of the FOIA are reserved for persons with private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph 1-505.

5-102 Requests from Government Officials

Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

5-103 Privileged Release to Officials

a. Subject to the provisions of DoD Regulation 5200.1-R (reference (g)), applicable to classified information, DoD Directive 5400.11 (reference (d)), applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulation may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

1. To Congress, in accordance with DoD Directive 5400.4 (reference (m)).

2. To the federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

3. To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

4. To state and local officials, as determined by the head of a DoD Component or designee.

b. DoD Components shall inform officials receiving records under the provisions of paragraph 5-103a that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

Section 2

INITIAL DETERMINATIONS

5-200 Initial Denial Authority

a. Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

b. The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibilty to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

c. The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

5-201 Reasons for Not Releasing a Record

There are six reasons provided by the FOIA for not complying with a request for a record. They are:

a. The information requested is not a record within the meaning of the FOIA and this Regulation.

b. A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

c. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

d. The DoD Component determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

e. The DoD Component determines that the request should be handled under the provisions of the Privacy Act.

f. The record is denied in accordance with procedures set forth in the FOIA and this Regulation.

5-202 Denial Tests

To deny a requested record that has been located, a DoD Component must determine that the denial meets the following tests:

a. The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Chapter III of this Regulation.

b. A significant and legitimate government purpose is served by withholding the record.

5-203 Reasonably Segregable Portions

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

5-204 Response to Requester

a. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 workings days after receipt of the request by the official designated to respond.

b. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

c. When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based and the significant and legitimate government purpose served by withholding the record. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

d. The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

1. All fees due have been received.

2. Fees have been waived because they fall below the automatic fee waiver threshold.

3. A request for waiver has been denied.

4. Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

5. Fees due in a specified amount have not been received.

e. The explanation of the substantive basis for a denial shall include both specific citation of the statutory exemption applied under provisions of this Regulation and a discussion of the significant and legitimate government purpose served by invoking an exemption. Merely referring to a classification or, to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

f. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

5-205 Extension of Time

a. In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

1. The requested record is located in whole or in part at places other than the office processing the request.

2. The request requires the collection and evaluation of a substantial number of records.

3. Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

b. The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

c. In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

d. As an alternative to the taking of formal extensions of time as described in subsections a, b and c above, the negotiation by the cognizant, FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

5-206 Misdirected Requests

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

5-207 Records of Non-U.S. Government Source

When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

5-208 File of Initial Denials

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

5-209 Special Mail Services

DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

5-210 Receipt Accounts

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

a. Receipt Account 2252, Sale of Publications and Reproductions, Freedom of Information Act. This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

b. Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act. This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

Section 3

APPEALS

5-300 General

If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt and its withholding justified for a significant

BEST DOCUMENT AVAILABLE

and legitimate government purpose, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

5-301 Time of Receipt

FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

5-302 Time Limits

a. The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial. At the conclusion of this period, the case may be considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

b. Final determinations on appeals normally shall be made within 20 working days after receipt.

5-303 Delay in Responding to an Appeal

a. If additional time is needed due to the unusual circumstances described in paragraph 5-205, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

b. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 5-205, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filling of a complaint shall be forwarded to the Department of Justice.

5-304 Response to the Requester

a. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

b. Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

1. The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this Regulation and the significant and legitimate government purpose served by its withholding.

2. When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

3. The final denial shall include the name and title or position of the official responsible for the denial.

4. The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

5. The response shall advise the requester of the right to judicial review.

5-305 Consultation

a. Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

b. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

Section 4

JUDICIAL ACTIONS

5-400 General

a. This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

b. A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

5-401 Jurisdiction

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

5-402 Burden of Proof

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

5-403 Actions by the Court

a. When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

5-404 Non-United States Government Source Information

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

5-405 Litigation Status Sheet

Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation.

CHAPTER VI

FEE SCHEDULE

Section 1

GENERAL PROVISIONS

6-100 Application

The fees described in this chapter apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (q)).

6-101 Fee Assessment

a. Minimum fees shall not be charged.

b. When direct search and duplication costs for a single FOIA request total less than $30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest.

c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

1. No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

2. A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

3. The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency. Fee charges are appropriate for news media requesters and may be assessed when:

(a) The fee charges exceed the fee waiver threshold of $30.00; and

(b) Either the requested record does not contain information that can be considered as primarily benefiting the general public, or

#First amendment (Ch 1, 2/24/81)

the search for the requested record requires an inordinate amount of DoD Component personnel time, and impacts adversely on the DoD Component concerned in accomplishing its primary functional missions.

4. When news media requests are broad in scope and are considered unreasonable by the Head of the Component, a specificity letter, as outlined in paragraph 5-107a of this regulation, should be dispatched. An estimate of fee charges may be included in the specificity letter, if practicable, or provided after receiving a reframed request.

5. The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

6. A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

6-102 Computation of Fees

The fee schedule contained in this chapter is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

Section 2

COLLECTION OF FEES AND FEE RATES

6-200 Collection of Fees

Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

6-201 Search Fees

a. Manual Search

Type	Grade	Hourly Rate ($)
Clerical	E9/GS8 and below	8
Professional	01-06/GS9-GS-15	16
Executive	07/GS16/ES1 and above	26

#First amendment (Ch 1, 2/24/81)

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

c. Actual cost of transporting records or personnel to the search site may be included.

6-202 Duplication Fees

Type	Cost per Page (¢)
Printed Material	01
Office Copy	10
Microfiche	25

6-203 Audiovisual Documentary Materials

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

6-204 Other Records

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

CHAPTER VII

REPORTS

Section 1

REPORTS CONTROL

7-100 General

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD-PA(TRA&A) 1365.

Section 2

ANNUAL REPORT

7-200 Reporting Time

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (r)). The standard data elements are contained in DoD 5000.12-M (reference (s)).

7-201 Annual Report Content

a. The annual report shall contain the following:

1. Item 1. Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

> Note: A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

2. Item 2. Provide statistics on the specific authorities--statutory exemptions, statutes, and categories of other reasons used in the totals above.

(a) Item 2(a). Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(b) Item 2(b). List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(c) Item 2(c). Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Regulation (the total will equal the number reported in Item 1).

3. Item 3. Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

4. Item 4. Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

5. Item 5. Repeat the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

6. Item 6. Repeat item 3 for appellate authorities including both subcolumnar statistics.

7. Item 7. When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

8. Item 8. List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the Federal Register reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

9. Item 9. The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

10. Item 10. The following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(a) Item 10(a). List all new categories of records now being released in whole or in part under FOIA.

(b) Item 10(b). The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(c) Item 10(c). Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(d) Item 10(d). Append a copy of all unpublished (not announced in the *Federal Register*) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level of the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(e) Item 10(e). Any other information, opinion, or recommendations considered pertinent by the DoD Component.

11. Item 11. Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward DoD Component personnel or the public.

12. Statistical data required by the items listed above shall be prepared in the format shown in Appendix D.

Section 3

TRIANNUAL REPORT

7-300 General

A portion of the annual reporting requirements has been selected for more frequent reporting to provide management data at intermediate DoD Components and DoD levels. The data selected fall into three areas: (1) costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

7-301 Time of Report

Each DoD Component shall prepare statistics triannually (Jan-Apr, May-Aug, Sep-Dec) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

7-302 Triannual Report Outline

a. The Triannual Report shall include the following:
Reporting Activity:
Period of Report:

1. Cost of Routine Requests Processed:
No. of reportable requests x (cost factor per request)--$_____

L:52

2. Personnel Costs (Civilian and Military):

(a) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade:
__________ Cost: $___

(b) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(1) Search Time Costs: ____

(2) Review and Excising: ____

(3) Coordination and Approval/Denial Decision Costs: ____

(4) Correspondence and Form Preparation: ____

(5) Other Activity Costs: ____
Total Manhour Costs: $____

(c) Application of Overhead:
(Subtotal a) + (Subtotal b) x (overhead rate): $____
Total of Direct Personnel Costs and Overhead: $____

3. Other Case Related Costs:

(a) Computer--------------------$____

(b) Office Copy Reproduction----$____

(c) Microfiche Reproduction-----$____

(d) Cost of Printed Records-----$____
Total of Other Costs: $____

4. Other Operating Costs:

(a) Reporting Costs[1]

(1) Operational ____

(2) User ____

(3) Overhead ____

((1) + (2) x (overhead rate)) ____
$____

(b) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $____

(Subtotal a) + (Subtotal b) $____

5. Summary:

(a) Total Costs of Sections 1 through 4, above $____

(b) Amount Collected from Requesters this Reporting Period:

Search____Copy____Total: $____

(c) No. of Requests Processed During this Reporting Period:

Reportable Requests____Appeals____Total:____

b. A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.

c. Format and instructions for the Triannual report are at Appendix G.

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[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last 4-month period (Sep-Dec) of each year, include the costs attributable to the Annual Report.

CHAPTER VIII

EDUCATION AND TRAINING

Section 1

RESPONSIBILITY AND PURPOSE

8-100 Responsibility

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this Regulation.

8-101 Purpose

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

8-102 Scope and Principles

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

a. Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

b. Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

c. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

d. Advise personnel of the penalties for noncompliance with the FOIA.

8-103 Implementation

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, ASD (Public Affairs).

8-104 Uniformity of Legal Interpretation

In accordance with DoD Directive 5400.7 (reference (b)) the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

APPENDIX A

UNIFIED COMMANDS - PROCESSING PROCEDURES FOR FOI APPEALS

1. General

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (e)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Processing Procedures

A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in Chapter III of this Regulation and a significant and legitimate government purpose is served by the withholding.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this regulation.

3. Responsibilities of Commands

Unified Commanders in Chief shall:

(a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA) the Pentagon, Washington, D.C. 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. Fees for FOI Requests

The fees charged for requested records shall be in accordance with Chapter VI of this Regulation.

5. Communications

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in Chapter VII of this Regulation.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(TRA&A) 1365.

c. The triannual reports for the periods January-April, May-August, September-December are required within 30 days after the close of the reporting period. The first report is due for the period May-August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD-PA (TRA&A) 1365.

APPENDIX B

ADDRESSING FOIA REQUESTS

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff. This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Projects Agency, Director of Defense Audit Service, Director of Defense Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to:

Director
Freedom of Information and Security Review
Office of the Assistant Secretary of Defense (Public Affairs)
Room 2C757, Pentagon
Washington, D. C. 20301

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG-AMR-S), Forrestal Building, 1000 Independence Avenue, S.W., Washington, D. C. 20314, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP-09B1), Room 5E-613, Pentagon, Washington, D. C. 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. Department of the Air Force. Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, D. C. 20330, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, D. C. 20305.

f. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va. 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. Defense Intelligence Agency (DIA). FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS-2A), Washington, D.C. 20301.

h. Defense Investigative Service (DIS). All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (D0020), 1900 Half St., S.W., Washington, D.C. 20314.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA-XA), Cameron Station, Alexandria, Virginia 22314, for records of its headquarters or DLA field activities if the record is known to be at the field location.

j. Defense Mapping Agency (DMA). FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, N.W., Washington, D. C. 20305.

k. Defense Nuclear Agency (DNA). FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, D.C. 20305.

l. National Security Agency (NSA). FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. Other Addresses

a. Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). FOI requests for CHAMPUS records may be sent to the Director, OCHAMPUS, Denver, Colorado 80240.

b. National Guard Bureau. FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGS-DA), Room 2C-362, Pentagon, Washington, D. C. 20301.

c. Miscellaneous. If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D. C. 20301.

APPENDIX C

LITIGATION STATUS SHEET

1. Case Number*
2. Requester
3. Document Title or Description
4. Litigation
    - a. Date Complaint Filed
    - b. Court
    - c. Case File Number*
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
    - a. Court's Finding
    - b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
    - a. Date Complaint Filed
    - b. Court
    - c. Case File Number*
    - d. Court's Finding
    - e. Disciplinary Action (as appropriate)

*Number used by component for reference purposes.

APPENDIX D

ANNUAL REPORT FORMAT

Item 1

Initial Determinations Resulting in not Providing all or a Portion of Record Requested

Total Demands			Reasons
Reporting* Activity	Completed Public Requests	Completed Reportable Requests	Statutory Exemption + Other = Total

Item 2(a)

Exemptions Invoked on Initial Determinations

Exemption by Number (552(b))

Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 2(b)

Statutes Invoked on Initial Determinations

Reporting* Activity	Statute	Number of Times

Item 2(c)

Other Reasons

Reporting* Activity	Category*					Total
	1	2	3	4	5	

Item 3

Initial Denial Officials by Participation

A. Total IDAs authorized: ________

B. IDAs involved in adverse determinations

Name*	Title	No. of Instances of Participation	
		Exemptions	Other

Item 4

Number of Appeals and Results

Reporting* Activity	Number of Appeals			
	Granted	Granted in Part	Denied	Total

Item 5(a)

Exemptions Invoked on Appeal Determinations

Exemptions by Number (522(b))

Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 5(b)

Statutes Invoked on Appeal Determinations

Reporting* Activity	Statute	Number of Times

Item 5(c)

Other Reasons Cited on Appeal Determinations

Reporting* Activity	Category*					Total
	1	2	3	4	5	

Item 6

Participation of Appellate Authorities
(those responsible for denials in whole or in part)

Name*	Title	No. of Instances of Participation	
		Exemptions	Other

Item 7

Court Opinions and Action Taken

Item 8

FOIA Implementation Rules or Regulations

Reporting* Activity	Document Identification	Fed. Reg. Ref.

Item 10A

Availability of Records
(New categories of segregable portions of records now being released)

Item 10C

Time Limit Extensions by Activity

		I		II & III	
Reporting* Activity	Location	Unusual Circumstances Volume	Consultation	Court Involvement	Total

Item 10D

Internal Memoranda
(Including Directives not Published in Federal Register)

Reporting* Activity	No. of Memoranda	No. Available to Public

Item 10E (Optional)

Other information (opinions) or recommendations on administering FOIA

Item 11

FOIA Instructional and Educational Efforts

NOTE: Items marked with an asterisk (*) have been registered in the DoD data element program.

BEST DOCUMENT AVAILABLE

APPENDIX E

OTHER REASON CATEGORIES

1. Transferred Requests

This category applies when responsibiltiy for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on Section 552(a) (3)(a) of the FOIA (reference (a)).

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on Section 552(a)(3)(b) of the FOIA (reference (a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

1. REQUEST NO.	2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3. DATE COMPLETED (yr., mo., day)	SEE INSTRUCTIONS ON BACK OF PAGE

4. CLERICAL HOURS (E-9/GS-8 AND BELOW)	TOTAL HOURS		HOURLY RATE		COST
SEARCH		X	$ 8.00	=	*
REVIEW/EXCISING					
CORRESPONDENCE AND FORMS PREPARATION					
OTHER ACTIVITY					

5. PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH		X	$ 16.00	=	*
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL					
OTHER ACTIVITY					

6. EXECUTIVE HOURS (O-7/GS-16 AND ABOVE)	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING		X	$ 36.00	=	
COORDINATION/APPROVAL/DENIAL					

7. COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		= *	

8. OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	.10	= *	

9. MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	.25	= *	

10. PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS		X	.01	= *	
PUBLICATIONS				*	
REPORTS				*	

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	*
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (yr., mo., day)		h. FEES WAIVED/REDUCED	☐ Y ☐ N

* *Chargeable to the Requester.*

DD FORM 1 JAN 80 2086

INSTRUCTIONS

PURPOSE: This form is used to record costs associated with the processing of a Freedom of Information request.

1. **Request Number** – First two digits will express CY followed by dash (-) and Component's request number, i.e., 78-001.

*2. **Type of Request** – Check the appropriate block to indicate initial request or appeal of a denial.

*3. **Date Completed** – Enter year, month and day, i.e., 78/06/21.

*4. **Clerical Hours** – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search – Time spent in locating from the files the requested information.
Review/Excising – Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.
Correspondence & Forms Preparation – Time spent in preparing the necessary correspondence and forms to answer the request.
Other Activity – Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. *Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.*

*5. **Professional Hours** – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising, and Other Activity – See explanation above.
Coordination/Approval/Denial – Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

–Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

*6. **Executive Hours** – For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising and Coordination/Approval/Denial – See explanation above.

– Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

*7. **Computer Search** – Enter the time to the nearest 15 minutes in the total hours column.

– Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. **Office Copy Reproduction** – Enter the number of pages reproduced.

– Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*9. **Microfiche Reproduction** – Enter the number of microfiche copies reproduced.

– Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. **Printed Records** – Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms;*
Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*
Reports *(Include any type of memorandum, staff action paper, etc.)*

– Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. **For FOI Office Use Only** –

a. **Search Fees Paid** – Enter total search fees paid by the requester.

b. **Copy Fees Paid** – Enter the total of copy fees paid by the requester.

c. **Total Paid** – Add search fees paid and copy fees paid. Enter total in the total paid block.

d.* **Date Paid – Enter year, month and day, i.e., 78/10/24, the fee payment was received.

e. **Total Collectable Costs** – Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. **Total Processing Costs** – Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. **Total Charged** – Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

h.* **Fees Waived/Reduced – Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

NOTE *All items marked with an asterisk (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category".*

APPENDIX G

* FORMAT FOR TRIANNUAL REPORT

Reporting Activity:*

Period of Report:

A. Cost of Routine Requests Processed:
No. of Reportable Requests x (cost factor per request)---$____

B. Personnel Costs (Civilian and Military):

(1) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade:

____________ Cost: $____________

(2) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(a) Search Time Costs: ____
(b) Review and Excising: ____
(c) Coordination and Approval/Denial Decision Costs: ____

(d) Correspondence and Form Preparation Costs: ____

(e) Other Activity Costs: ____

Total Manhour Costs: $____

(3) Application of Overhead:
(Sub-total A) + (Sub-total B) x (overhead rate): $____
Total of Direct Personnel Costs and Overhead: $____

C. Other Case Related Costs:

(1) Computer*---$_____
(2) Office Copy Reproduction*-----------------------$_____

BEST DOCUMENT AVAILABLE

90-108 O—82——54

(3) Microfiche Reproduction*--------------------------$_______
(4) Cost of Printed Records*--------------------------$_______

Total of Other Costs: $_______

D. Other Operating Costs:

(1) Reporting Costs[1]

(a) Operational _____
(b) User _____
(c) Overhead _____
((a) + (b) x (overhead rate)) _____

$_____

(2) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $_____

(Sub-total (1)) + (Sub-total (2)) $_____

E. Summary

(1) Total Costs of Sections A through D above $_____
(2) Amount Collected from Requesters this Reporting Period:
Search _____ Copy _____ Total: $ _____
(3) No. of Requests Processed During this Reporting Period:
Reportable Requests _____Appeals _____Total: _______

---

[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last four-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

NOTE: Items marked with an asterisk (*) have been registered in the DoD Data Element Program.

INSTRUCTIONS FOR TRIANNUAL FOI REPORT

1. General

a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria or the Privacy Act, is excluded from this reporting requirement.

2. Section A

Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. Section B

a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

Sample Computation[1]
(Air Force)

Grade/ Step	No.		1/3 Annual Wage		% of Time		Cost
O-4	1	X	$7697	X	25	=	$1924
O-3	1	X	6459	X	50	=	3230
GS-9(5)	1	X	4844	X	100	=	4844
GS-4(3)	1	X	2701	X	25(2)	=	1350
					225		$11,348

MANYEARS = 225 - 100 - 3 = .75

---

[1] (a) Military Grades - use DoD Accounting Guidance Handbook (DoD 7220.9-H, Sec. 252 (reference (u))
(b) Civilian Grades - use Office of Personnel Management Salary Table

b. Use of one-third the annual wage and dividing manyears by three is required in this triennual report. Delete the computation.

c. Section B.(2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2)(b) and (c) of Section B. (2)

Example Computation:

Clerical Search hours 2071.75 x $ 8.00 = $16,574.00
Professional Search hours 910.20 x $16.00 = $14,563.20

(1) Search time costs ---------------------- = $31,137.20

d. Section B.(3) applies overhead to the direct manyear/manhour costs previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. Section C

Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. Section D

Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DoD Component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. Section E

The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

REFERENCES

(e) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980
(f) Title 5, United States Code, Section 551, "Administrative Procedures Act"
(g) DoD 5200.1-R, "DoD Information Security Program Regulation," October 1980, authorized by DoD Directive 5200.1, November 29, 1978
(h) Title 35, United States Code, Section 181-188, "Patent Secrecy"
(i) Title 43, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data"
(j) Title 18, United States Code, Section 798, "Communication Intelligence"
(k) Title 18, United States Code, Section 3500, "The Jencks Act"
(l) DoD Directive 5200.20, "Distribution Statements on Technical Documents," September 24, 1970
(m) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978
(n) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958
(o) ACP-121 (United States Supplement 1)
(p) Title 44, United States Code, Chapter 33, "Disposal of Records"
(q) DoD Instruction 7230.7, "User Charges," June 12, 1979
(r) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964
(s) DoD 5000.12-M, "DoD Manual for Standard Data Elements," December 1979, authorized By DoD Directive 5000.12, April 27, 1965
(t) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974
(u) DoD Handbook 7220.9-H, "DoD Accounting Guidance Handbook," February 1, 1978, authorized by DoD Instruction 7220.9, July 12, 1971

DoD FREEDOM OF INFORMATION ACT PROGRAM COMPONENTS

Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff/Unified Commands and Other Agencies Assigned to OSD for Administrative Support

Department of the Army

Department of the Navy

Department of the Air Force

Defense Communications Agency

Defense Contract Audit Agency

Defense Intelligence Agency

Defense Investigative Service

Defense Logistics Agency

Defense Mapping Agency

Defense Nuclear Agency

National Security Agency

APPENDIX M—RECORDS RETENTION REQUIREMENT

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APPENDIX M

RECORDS RETENTION REQUIREMENTS

Part 1—General

M-101 General.

(a) Contractors and Subcontractors are required to retain and make available books, records, documents, and other supporting evidence required to satisfy contract negotiation, administration, and audit requirements of the Department of Defense and the Comptroller General of the United States. These requirements are prescribed by contract clauses.

(b) The general record retention requirements of these contract clauses are subject to the exceptions set forth in this Appendix. The Appendix identifies these exceptions and prescribes specific retention periods for them.

(1) Records are identified herein primarily in terms of their purpose or use and not by specific name or form number. The descriptive identifications may or may not conform to contractor usage or individual filing practices; but they are to apply to all records kept by the contractor which come within the description, regardless of contractor designations of such records. If two or more of the record categories described are interfiled and screening for disposal is not practical, the contractor or the subcontractor shall retain the entire record series for the longest period prescribed for any of the records.

(2) The prescribed retention periods for the records described in M-201 shall be calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract. Where there is a series of such entries involving a specific record, the retention period for that record shall be calculated from the end of the contractor's fiscal year in which the final entry is made. To apply these retention periods, the contractor or subcontractor should cut off the records in annual blocks and retain for block disposal in accordance with the prescribed retention periods under the related contract or subcontract. An exception to the foregoing starting time for the retention periods shall occur where records generated during a prior contract are relied upon by a contractor for cost and pricing data in negotiation of a succeeding contract, and the two- and four-year periods will run for those records from the date of the succeeding contract.

(c) The provision in this Appendix shall not be construed as exempting the contractor from compliance with any applicable statute or other lawful requirement for the retention of records for longer periods than prescribed herein. If the contractor should retain records described in M-201 for longer periods because of justifiable purposes, such records shall be subject to the right of the Comptroller General to have access to and to examine within the statutory periods provided in the contract clause.

RECORDS RETENTION REQUIREMENTS

M-102 Retroactive Application. The prescribed retention periods set forth in this Appendix are applicable to all contractual record retention provisions in existence at the date of adoption of this Appendix.

RECORDS RETENTION REQUIREMENTS

Part 2—Retention Requirements

M-201 Retention Periods. Contractors and subcontractors shall retain the records described in the contract or subcontract records clauses, and shall make them available to the Comptroller General of the United States, the Contracting Officer, or their authorized representatives,(i) until expiration of three years after final payment or, for certain records, for the period specified in this paragraph M-201, whichever expires earlier, and (ii) for whatever longer period, if any, is specified in the general requirements of the applicable contract or subcontract records clause.

M-201.1 *Financial and Cost Accounting Records.* Retain for the following periods, calculated as provided in M-101(b)(2):

(i) accounts receivable invoices, adjustments to the accounts, invoice registers, shipping orders, carrier freight bills, or other documents which detail the material or services billed on the related invoices—RETAIN 4 YEARS.

(ii) material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies—RETAIN 4 YEARS.

(iii) cash advance recaps, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses—RETAIN 4 YEARS.

(iv) paid, canceled, and voided checks, other than those issued for the payment of salary and wages—RETAIN 4 YEARS.

(v) accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda—RETAIN 4 YEARS.

(vi) labor cost distribution cards or equivalent documentation—RETAIN 2 YEARS.

(vii) petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents—RETAIN 2 YEARS.

M-201.2 *Pay Administration Records.* Retain for the following periods, calculated as provided in M-101(b)(2):

(i) payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements—RETAIN 4 YEARS.

(ii) clock cards or other time and attendance cards—RETAIN 2 YEARS.

(iii) paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees—RETAIN 2 YEARS.

M-201.3 *Procurement and Supplies Records.* Retain for the following periods, calculated as provided in M-101(b)(2):

(i) stores requisitions for materials, supplies, equipment, and services—RETAIN 2 YEARS.

(ii) work orders for maintenance and other services—RETAIN 4 YEARS

(iii) equipment records, consisting of equipment utilization and status reports and equipment repair orders—RETAIN 4 YEARS.

(iv) expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract—RETAIN 4 YEARS.

(v) receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and material—RETAIN 4 YEARS.

(vi) purchase order files for supplies, equipment, material, or services, to be used in the performance of a contract or subcontract—and supporting documentation and backup files including but not limited to invoices, memoranda, etc., (e.g., memoranda of negotiations setting forth the principal elements of subcontract price negotiations (see 7-104.23(a), 7-203.8(a), and 7-402.8(a).)—RETAIN 4 YEARS.

(vii) production records of quality control, reliability, and inspection—RETAIN 4 YEARS.

M-202 Nonapplicability of Retention Requirements. The retention periods in M-201 are not applicable to extra copies of documents or intermediate data records. These may be disposed as follows:

(a) Those duplicate copies of documents which are not required for Government purposes may be destroyed at any time, *provided* such copies do not contain significant information not shown on the retained record copies.

(b) Intermediate data records consisting of punched cards, electronic tape, or comparable media may be disposed of if printouts or listings are prepared and maintained showing the details of the transactions charged or allocated to individual Government contracts and identifying the supporting source documents.

RECORDS RETENTION REQUIREMENT

Part 3—Microfilming of Records

M-301 General. Contractors and subcontractors may elect to use microfilm for recordkeeping subject to the constraints contained in this Part. Film chips, jackets, aperture cards, microprints, roll film and microfiche are forms of microfilm available for permanent recordkeeping.

M-302 Microfilm Requirements.

(a) All microfilm shall be reviewed by the contractor prior to the destruction of the hard copy documents to assure legibility, reproducibility and readability of the microfilm. Contractor documents frequently contain notes, worksheets and other papers which are helpful in reconstructing or understanding past transactions. In the process of microfilming these documents, all relevant notes, worksheets and other papers shall also be microfilmed to preserve the rationale for the actions taken. Equipment shall also be available to provide "*hard copy*" reproductions of any of the forms of microfilm used.

(b) The quality of the contractor's record microfilming process is subject to periodic review by the Administrative Contracting Officer.

(c) Unless earlier retirement of records is permitted under M-201, original records which have been microfilmed shall not be destroyed prior to (i) 18 months after final payment of the contract, (ii) all claims under the contract being settled, and (iii) the time original records are required to be kept by other laws or regulations. Under (i) above, the ACO, with advice of DCAA, may agree to a lesser retention period where the contractor has established adequate internal controls including continuing surveillance over the microfilm system.

M-303 Filing and Retrievability. The contractor shall maintain an effective indexing system which will permit timely and convenient accessibility to the records by the Government. All systems used shall provide for strict security measures to preclude the loss of microfilm and the safeguarding of classified information. Since images on microfilm cannot be read by the unaided eye, adequate viewing equipment is essential. The contractor shall have a printout capability that will provide "*hard copy*" printouts enlarged to the approximate size of the original photographed material. Microfilm shall be stored in a fireproof cabinet in an environment which ensures the safety of these records through the retention periods specified in M, Part 2.

M-304 Legibility and Readability. Microfilm when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals of being recognizable as words or whole numbers.

APPENDIX N
ACTIVITY ADDRESS NUMBERS

See Defense Acquisition Circular Number 76-21.

APPENDIX O

COST ACCOUNTING STANDARDS, RULES, AND REGULATIONS

See Defense Procurement Circular Number 76-1.

(Note: The Cost Accounting Standards Board Regulations are codified in 4 CFR Chapter III.)

APPENDIX P

DEPARTMENT OF DEFENSE DIRECTIVE 5400.11

of 4 August 1975

SUBJECT:
Personal Privacy and Rights of Individuals Regarding Their Personal Records

August 4, 1975 No. 5400.11

ASD(C)

Department of Defense Directive

SUBJECT Personal Privacy and Rights of Individuals Regarding Their Personal Records

Refs.: (a) 5 USC 552a, P.L. 93-579 (The Privacy Act of 1974)
(b) through (n) see enclosure 1

Table of Contents, see enclosure 2

I. PURPOSE

This Directive implements reference (a) by prescribing:

A. The procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him.

B. The requirements for verifying the identity of an individual who requests his record or information pertaining to him before the record or information shall be made available to him.

C. The procedures for granting access to an individual upon his request of his record or information pertaining to him.

D. The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to him, for making a determination on the request, and for an appeal of an initial adverse determination.

E. The procedures and policies governing the collection, safeguarding, maintenance, public notice, use and dissemination of personal information.

F. The conditions under which disclosure of personal information may be made and procedures for exempting systems of records from certain requirements of the Privacy Act of 1974 (reference (a)).

II. CANCELLATION

Reference (b) is hereby superseded and cancelled.

III. APPLICABILITY AND SCOPE

A. The provisions of this Directive apply without restrictions to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to singularly as a "Component" or collectively as "DOD Components") except for the National Security Agency; it is applicable to all National Security Agency official records and systems of records except those maintained pursuant to Public Law 86-36 and Public Law 88-290.

B. Its provisions govern the collection, maintenance, use and dissemination of personal information by the Department of Defense in accerdance with 5 USC 552a (reference (a)). Requests for information under the Freedom of Information Act 5 USC 552 (reference (c)) by an individual about another individual are governed by the provisions of DoD Directive 5400.7 (reference (d)). Requests for personal information from the General Accounting Office are governed by DoD Directive 7650.1 (reference (e)), requests for personal information from the Congress are governed by DoD Directive 5400.4 (reference (k)) and from other agencies and the courts by DoD Directive 5400.7 (reference (d)) as well as the provisions of this Directive.

IV. POLICY

The policy of the Department of Defense is to:

A. Preserve the personal privacy of individuals, permitting an individual to know what records pertaining to him are collected, maintained, used, or disseminated in the Department of Defense, and to have access to and have a comprehensible copy made of all or any portion of such records, and to correct or amend such records.

B. Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

V. AUTHORITY AND RESPONSIBILITIES

A. Defense Privacy Board. A Defense Privacy Board is hereby established for the purpose of ensuring the preservation of individual privacy within the Department of Defense. Privacy programs and procedures shall be developed and coordinated by the Board under the chairmanship of the Deputy Assistant Secretary of Defense (Administration).

1. Membership of the Board shall consist of representatives designated by the Secretaries of the Military Departments; Director, Defense Supply Agency; Assistant Secretary of Defense (Manpower and Reserve Affairs); Assistant Secretary of Defense (Comptroller); and the General Counsel.

2. The Board shall insure active participation by all DoD Components in the development and operation of the Privacy Program, and shall insure that each DoD Component:

   a. Identify all DoD systems of records affected by the Privacy Act.

   b. Obtain all data required by the Act concerning each record system so identified.

   c. Review policies, practices and procedures relating to each identified system of records to ensure they are in conformity with the Act.

   d. Review for conformity with the Act, all procedures, including forms, which require an individual to furnish information, and formulate corrective or supplementary provisions, as necessary.

   e. Supervise the preparation for publication in the Federal Register of all required information on systems of records affected by the Act.

f. In conjunction with the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) (OASD(M&RA)), ensure development within each DoD Component of an appropriate training program for all personnel whose duties involve responsibilities for systems of records affected by the Act.

g. Refer to the Office of General Counsel, Department of Defense for resolution, any requirement for information from an individual which does not appear to be clearly authorized by law or Executive Order.

h. Review proposed DoD Directives and related issuances pertaining to the Privacy Act, as well as draft implementing regulations of the DoD Components, in order to provide the comprehensive guidance necessary for uniform compliance with the Act by all elements of the Department of Defense.

i. Serve as the focal point on privacy matters for the Department of Defense in communications with the Office of Management and Budget, the Privacy Protection Study Commission, and the Office of the Federal Register for publication of system notices.

B. DoD Components. The Head of each DoD Component shall:

1. Designate a Privacy Act officer to serve as the principal point of contact on privacy matters;

2. Establish and maintain an effective internal Privacy Program, through all echelons, as prescribed herein.

3. Cause to review all directives to insure compliance with the Privacy Act of 1974 (reference (a)).

C. The Assistant Secretary of Defense (Manpower and Reserve Affairs). In conjunction with the Defense Privacy Board, the ASD(M&RA) shall ensure that the various DoD Components instruct all personnel involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, in the rules and requirements of the Privacy Act and in the penalties for noncompliance.

D. The Assistant Secretary of Defense (Comptroller). The ASD (Comptroller) shall formulate DoD policies to ensure that ADP systems contain appropriate safeguards to protect both personal privacy and national security, in accordance with DoD Directive 5100.40 (reference (g)).

VI. ANNUAL REPORT

A. Each DoD Component shall prepare an annual report for the preceding calendar year on its implementation of the Privacy Act of 1974 (reference (a)).

B. Six copies of the report shall be furnished to OASD(C) by March 31 of each year for transmittal to the Office of Management and Budget.

C. The annual report shall contain the following:

1. Summary - A brief management summary of the status of actions taken to comply with the Act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies or procedures.

2. Accomplishments - A summary of major accomplishments; i.e., improvements in agency information practices and safeguards.

3. Plans - A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities planned.

4. Exemptions - A list of systems which are exempted during the year from any of the operative provisions of this law permitted under the terms of subsections (j) and (k) of the Privacy Act (reference (a)), whether or not the exemption was obtained during the year, the number of records in each system exempted from each specific provision and reasons for invoking the exemption.

5. Number of Systems - A brief summary of changes to the total inventory of personal data systems subject to the provisions of the Act, including reasons for major changes; e.g., the extent to which review of the relevance of and necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained.

6. Operational Experiences - A general description of operational experiences including estimates of the number of individuals (in relation to the

total number of records in the system) requesting information on the existence of records pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

7. Costs - Any available data, or estimates, of the cost of administering the Privacy Act of 1974 (reference (a)).

D. This reporting requirement is assigned Report Control Symbol DD(A)1379.

VII. EFFECTIVE DATE AND IMPLEMENTATION

A. This Directive is effective September 27, 1975.

B. DoD Components shall issue regulations to carry out the policies set forth in this Directive. Two (2) copies of the implementing regulations shall be forwarded to the Assistant Secretary of Defense (Comptroller).

W. P. Clements

Deputy Secretary of Defense

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1. References
2. Table of Contents
3. Definitions
4. Access by the Individual
5. Disclosure to Others
6. Collection of Personal Information from Individuals
7. Exemptions
8. Systems of Records w/Attachment

(Enclosure #1)

REFERENCES

(b) DoD Directive 1344.11, "Preservation of Personal Privacy of Members of the Armed Forces," September 22, 1970 (hereby cancelled)
(c) 5 U.S.C. 552 (The Freedom of Information Act)
(d) DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," February 14, 1975
(e) DoD Directive 7650.1, "General Accounting Office, Comprehensive Audits," July 9, 1958
(f) DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," December 23, 1974
(g) DoD Directive 5100.40, "Responsibilities for the Administration of the Automatic Data Processing Program," May 18, 1970
(h) 18 USC section 3056
(i) 13 USC section 8
(j) DoD 5200.1-R, "Information Security Program Regulation," authorized by DoD Directive 5200.1, June 1, 1972
(k) DoD Directive 5400.4 "Provision of Information to the Congress," February 20, 1971
(l) Federal Personnel Manual
(m) Executive Order No. 9397, November 22, 1943
(n) Format and Instructions for Preparation of Initial Records Systems Notices for the Federal Register, May 5; 1975

(Enclosure #2)

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(Enclosure #3)

DEFINITIONS

A. Individual. A citizen of the United States or an alien lawfully admitted for permanent residence. A legal guardian or the parent of a minor have the same rights as the individual and may act on behalf of the individual.

B. Maintain (Records on Individuals). Collect, use, or disseminate.

C. Record. Any item, collection, or grouping of information about an individual that is maintained by a component or element thereof, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

D. System of Records. A group of any records under the control of any component or element thereof from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

E. Routine Use. With respect to the disclosure of a record, or the use of such record for a purpose which is compatible with the purpose for which it was collected. Routine use encompasses not only common or ordinary uses, but also all the proper and necessary uses of the record, even if such use occurs infrequently.

(Enclosure #4, page 1)

ACCESS BY THE INDIVIDUAL

A. Upon request, an individual shall be informed whether or not a system of records contains a record pertaining to him, and accompanied by a person of his own choosing, if he so desires, shall be permitted to review his records, and to obtain a copy of such records in a form that is comprehensible to him at a reasonable cost unless exempted in accordance with enclosure 7 or A.5. below. This Directive does not require that a record be created or that an individual be given access to records which are not retrieved by name or other individual identifier. Only costs of reproduction, as set forth in DoD Directive 5400.7 (reference (d)), may be charged; however, if copying is the only means whereby the record can be made available to the individual, reproduction fees will not be assessed (i.e. when a copy must be made in order to delete information contained on the record pertaining to another individual).

1. The granting of access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

2. Prior to being granted access to personal information, an individual may be required to provide reasonable verification of his identity.

    a. No verification of identity shall be required of an individual seeking access to records which are otherwise available to any member of the public under DoD Directive 5400.7 (reference (d)).

    b. For the individual who seeks access in person, verification of identity will normally be made by those documents which an individual is likely to have readily available, such as employee or military identification card, driver's license, or medical card.

    c. When access is requested by mail, verification of identity may consist of the individual providing certain minimum identifying data, such as, name and date of birth or such other information deemed necessary by the DoD Component having custody of the record. If the sensitivity of the data warrants, a signed notarized statement of identity may be required.

(Enclosure #4, page 2)

d. An individual shall not be denied access to his record for refusing to disclose his Social Security Number (SSN) unless disclosure of his SSN is required by statute or by regulation adopted before January 1, 1975.

e. Individuals may not be denied access to a record pertaining to themselves because those records are exempted from disclosure under the provisions of DoD Directive 5400.7 (reference (d)).

3. Access to a record or a copy thereof will not be denied solely because the record's physical presence is not readily available (i.e., on magnetic tape) or because the context of the record may disclose sensitive information about another individual. To protect the personal privacy of other individuals who may be identified in a record, an extract shall be prepared deleting only that information which would not be released to the requesting individual under DoD Directive 5400.7 (reference (d)).

4. A medical record shall be disclosed to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the information may be transmitted to a physician named by the requesting individual.

5. This Directive does not entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

6. A DoD Component may require an individual who wishes to be accompanied by another person when receiving access to his records to furnish a written statement authorizing discussion of the records in the presence of the accompanying person.

7. Any requests from an individual for access to a system of records shall be processed in accordance with this Directive and not the Freedom of Information Act (reference (c)). Normally, requests for access to records should be acknowledged within 10 work days of receipt and access provided within 30 work days.

8. Copies of investigatory records compiled by any investigative organization, but in the temporary custody of

(Enclosure #4, page 3)

an element requesting the record for purposes of adjudication or other personal action, are the records of the originating investigative organization. Individuals seeking access to such records shall be directed to the originating investigative organization and should be instructed to direct all requests submitted under the Privacy Act of 1974 (reference (a)) to that organization. Records concerning the adjudication, or other personnel actions based on the investigative records, originated by the organization using the investigation, are the records of the using organization which shall respond to all other requests under the Privacy Act of 1974 (reference (a)) concerning them.

B. Amendment of Personal Information

1. An individual shall be given the opportunity to request either in person or through the mail that his record be amended. The component may, however, require that such request be made in writing. Instructions for the preparation of a request and any forms employed should be as brief and as simple as possible. Requests should contain as a minimum, identifying information to locate the record, a description of the items to be amended and the reason amendment is being requested. A request shall not be rejected or required to be resubmitted unless additional information is essential to process the request. Incomplete or inaccurate requests shall not be rejected categorically; the individual shall be asked to clarify the request as needed. Individuals shall be required to provide verification of identity as in A.2., this enclosure, to assure that the requester is seeking to amend records pertaining to him and not, inadvertently or intentionally, the records of another individual.

2. A written acknowledgment of the receipt of a request for amendment of a record must be provided to the individual within 10 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. The acknowledgment shall clearly identify the request and advise the individual when he may expect to be advised of action taken on the request. Whenever practicable the decision shall be made within 30 working days. No separate acknowledgment of receipt is necessary if the request can be either approved or denied, and the individual advised within the 10-day period. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(Enclosure #4, page 4)

3. If the DoD Component agrees with any portion or all of the individual's request to amend a record, it shall promptly advise the individual and amend the record accordingly. If a disclosure accounting has been made, the component shall advise all previous recipients of the record that the amendment has been made and the substance of the correction.

4. If the DoD Component disagrees with all or any portion of a request to amend a record, it shall promptly:

   a. Advise the individual of its refusal and the reasons therefor;

   b. Inform the individual that he may request a further review by the Head of the DoD Component, or his designee; and

   c. Describe the procedures for requesting such a review, including the name and address of the official to whom the request should be directed.

5. A review of the initial refusal to amend a record shall be made if requested by the individual.

   a. The Head of the DoD Component, or his official designee, shall make a review of the initial determination.

   b. If, after conducting the review, the reviewing official also refuses to amend the record in accordance with the individual's request, the individual shall be notified:

      (1) Of the refusal and the reasons therefor;

      (2) Of the right to file a concise statement of reasons for disagreeing with the decision of the agency;

      (3) Of the procedures for filing a statement of disagreement; and that such statement will be made available to anyone to whom the record is subsequently disclosed.

      (4) That prior recipients of the disputed record will be provided a copy of the statement of disagreement to the extent that an accounting of disclosures is maintained;

      (5) Of his right to seek judicial review of the agency's refusal to amend a record.

(Enclosure #4, page 5)

c. If the reviewing official determines that the record should be amended in accordance with the request, the DoD Component shall amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

d. A final determination on the individual's request for a review of an initial refusal to amend a record must be completed within 30 working days after receipt by the proper office unless the Head of the DoD Component determines that a fair and equitable review cannot be completed in that time. If additional time is required, the individual shall be informed in writing of the reasons for the delay and of the approximate date on which the review is expected to be completed.

6. When an individual files a statement of dispute, the DoD Component shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently grant access to, use or disclose the record. The notation itself shall be integral to the record. Where an accounting of disclosure has been made, the component shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement.

a. The individual's statement of dispute need not be filed as an integral part of the record to which it pertains. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the DoD Component shall note which information is disputed and provide a copy of the individual's statement.

b. A DoD Component may include a brief summary of its reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. The Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedures.

(Enclosure #5, page 1)

DISCLOSURE TO OTHERS

A. Except as prescribed in enclosure 4, this Directive does not require disclosure of records to anyone other than the individual to whom the records pertain.

B. No record contained in a system of records maintained within the Department of Defense shall be disclosed by any means of communication to any person, or to any agency outside the Department of Defense, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record will be:

1. To those officials and employees of the Department of Defense who have a need for the record in the performance of their duties and the use is compatible with the purpose for which the record is maintained. This includes, for example, transfer of information between components when civilians or military personnel assigned or affiliated with one component are processed by an activity of another component such as Armed Forces Examination and Entrance Stations (AFEES), Air Terminals, or Defense Investigative Service (DIS).

2. Required to be disclosed to a member of the public by the Freedom of Information Act (reference (c)). Some examples of personal information pertaining to military personnel, which normally are released without an unwarranted invasion of privacy are: name, rank, date of rank, salary, present and past duty assignments, future assignments which have been finalized, office phone number, source of commission, military and civilian educational level, and promotion sequence number. Disclosure of personal information pertaining to civilian employees shall be made in accordance with the Federal Personnel Manual (reference (l)).

3. For a routine use as defined in enclosure 3 and described in attachment 1 to enclosure 8.

4. To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity authorized by law.

5. To a recipient who has provided the Department of Defense or Component with advance adequate written assurance that (a) the record will be used solely as a statistical research or reporting record;

(Enclosure #5, page 2)

(b) the record is to be transferred in a form that is not individually identifiable (i.e. the identity of the individual cannot be determined by combining various statistical records); and (c) will not be used to make any decisions about the rights, benefits or entitlements of an individual.

6. To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value. A record transferred to a Federal records center for safekeeping or storage does not fall within this category since Federal records center personnel act on behalf of the Department of Defense in this instance and the records remain under the control of the DoD Component. No disclosure accounting record of the transfer of records to Federal records centers need be maintained.

7. To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the DoD Component which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought. Blanket requests for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency at the initiative of the DoD Component which maintains the record when criminal conduct is suspected, provided that such disclosure has been established in advance as a "routine use."

8. To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

9. To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee. This does not authorize the disclosure of any record subject to this Directive to members of Congress acting in their individual capacities or on behalf of their constituents, unless the individual consents.

(Enclosure #5, page 3)

10. To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

11. Pursuant to the order of a court of competent jurisdiction.

    a. When a record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, make reasonable efforts to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his most recent address as contained in the DoD Component's records.

    b. Upon being served with an order to disclose a record, the DoD Component shall endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure shall be made at the time the Component complies with the order or subpoena.

C. Each DoD Component, with respect to each system of records under its control, shall:

1. Except for disclosures made under B.1. and 2., this enclosure, keep an accurate accounting of the date, nature, and purpose of each disclosure of a record to any person or to another agency; and the name and address of the person or agency to whom the disclosure is made. A DoD Component need not make a notation on a single document of every disclosure of a particular record, provided it can construct from its system the required accounting information (a) when required by the individual; (b) when necessary to inform previous recipients of any amended records or (c) when providing a cross reference to the justification or basis upon which the disclosure was made (includin any written documentation as required in the case of the release of records for statistical or law enforcement purposes).

2. Retain the accounting made under 1., above for at least 5 years after the last disclosure or the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(Enclosure #5, page 4)

3. Upon request of the individual to whom the record pertains, make available to that individual all information in its accounting of disclosures except that pertaining to disclosures for law enforcement purposes pursuant to B.7., this enclosure.

D. Names and Addresses

1. An individual's name and address may not be sold or rented by a component unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

2. Lists or compilations of names and home addresses, or single home addresses will not be disclosed, without the consent of the individual involved, to the public including, but not limited to, individual congressmen, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly. This prohibition may be waived when circumstances of a case indicate compelling and overiding interests.

(Enclosure #6, page 1)

COLLECTION OF PERSONAL INFORMATION FROM INDIVIDUALS

A. Collection Directly from Individual. Personal information shall be collected to the greatest extent practicable directly from the individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made under certain circumstances, such as the following:

1. There is a need to ensure accuracy of information supplied by an individual by verifying with a third party, such as in the case of verifying information for a security clearance.

2. The nature of the information is such that it can only be obtained from a third party, such as an employee's performance in a previous job or assignment.

3. Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

B. Informing Individuals From Whom Information Is Requested. Each individual who is asked to supply personal information must be told of (1) the authority (statute or executive order) which authorizes its solicitation; (2) the principal purpose or purpose for which it is to be used; (3) the routine uses to be made of it; (4) whether furnishing such information is mandatory or voluntary; and (5) the effects on him, if any, of not providing it. This notice to the individual may be made on the form which the DoD Component uses to collect the information or on a separate form which can be retained by the individual. This advice must be given regardless of the media used in requesting information, whether it is a "form" in the usual sense (i.e., a preprinted document with a control number and an edition date) or a format, questionnaire, survey sheet, or report rendered on a blank sheet.

1. "Forms" in Use Prior to September 27, 1975. Forms in use before September 27, 1975 which are to be used on and after that date, must meet the notice requirements by use of a separate statement to accompany each form subject to the provisions of the Privacy Act of 1974 (reference (a)). The statement will be assigned the identifying number used in collecting the information and the suffix "Privacy Act Statement", as follows:

a. For forms in regularly issued, numbered series, the

Privacy Act Statement shall bear the same number as the form to which it pertains. Example: For DD Form 398, Statement of Personal History, the applicable notice to each individual asked to complete the form will be identified as "DD Form 398 - Privacy Act Statement".

b. For unnumbered formats, questionnaires, survey forms and reports, the Privacy Act Statement will bear the report control symbol or OMB Approval Number under the authority of which the information is collected if applicable. Example: For the Air Force Junior ROTC Survey for AFJROTC Cadets (Format A), the applicable notice to each individual asked to complete the questionnaire will be identified as "OMB Approval No. 21-R0268-Privacy Act Statement".

2. "Forms" Initiated or Revised On and After September 27, 1975. As forms are revised or new ones issued the Privacy Act Statement shall be incorporated, if practical, in the body of each form, format, questionnaire, survey sheet or report initiated or revised which is used to collect personal information on or after September 27, 1975. Where feasible the Privacy Act Statement when incorporated on a form, format, etc. should be positioned in such a manner that the individual will be informed of the information required by the Act before he begins to furnish any of the information requested.

3. Responsibilities

a. The proponent (i.e., the initiator) has the final responsibility for determining whether a form, format, questionnaire, survey, or report requires a Privacy Act Statement. Statements should be sufficiently complete and specific but, at the same time, be concise and couched in easily understood language.

b. Forms and information management officers at all echelons within DoD Components must assure that Privacy Act Statements are available and that new forms contain the Privacy Act statements, if required.

c. No component may deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his (SSN), unless such disclosure is (1) required by Federal statute or (2) to any component maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute

(Enclosure #6, page 3)

or regulation adopted prior to such date to verify the identity of an individual. Executive Order No. 9397, November 22, 1943, authorizes components to use SSN as a system of numerical identification of individuals (reference (n)).

d. Any DoD Component which requests an individual to disclose his SSN must inform that individual (a) whether that disclosure is mandatory or voluntary; (b) by what statutory or other authority such number is solicited; and (c) what uses will be made of it.

e. If disclosure of the SSN is not required by Federal statute or is not for a system of records in existence and operating prior to January 1, 1975, DoD Components are not precluded from requesting it from individuals concerned. However, the separate Privacy Act Statement for the SSN alone, or a merged Privacy Act Statement, covering not only the SSN but also other items of personal information, must make clear that the disclosure of the SSN is voluntary. If, in such instances, the individual refuses to disclose it, the DoD Component concerned must be prepared to identify him by alternate means.

(Enclosure #7, page 1)

EXEMPTIONS

The Head of the Component shall designate the Component systems of records which are to be exempted from certain provisions of the Privacy Act of 1974 (reference (a)), and they shall cause to be published in the Federal Register, information specifying the name of each designated system, the specific provisions of the act from which each system is to be exempted, and the reasons for each exemption of the record system.

A. General Exemptions. To qualify for a general exemption, as defined in the Privacy Act of 1974 (reference (a)), the system of records must be maintained by a DoD Component or element thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities. Such system of records must consist of:

1. Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and containing only identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

2. Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

3. Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

B. Specific Exemptions. To qualify for a specific exemption, as defined by the Privacy Act of 1974 (reference (a)) the system of records must be:

1. Specifically authorized under criteria established under an Executive Order to be kept classified in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

2. Investigatory material compiled for law enforcement purposes, other than material covered under a general

(Enclosure #7, page 2)

exemption; however, an individual shall not be denied access to information which has been used to deny him a right or privilege unless disclosure would reveal a confidential source. Components shall establish procedures governing the granting of confidentiality;

3. Maintained in connection with providing protective service to the President of the United States or other individuals protected pursuant to 18 U.S.C. §3056 (reference (h));

4. Used only to generate aggregate data or for other similarly evaluative or analytic purposes and which are not used to make decisions on the rights, benefits, or entitlements of individuals except for the disclosure of a census record permitted by 13 U.S.C. §8 (reference (i));

5. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Components shall establish procedures governing the granting of confidentiality;

6. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

7. Evaluation material used to determine potential for promotion in the Armed Services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. DoD Components shall specify those categories of individuals for whom pledges of confidentiality may be made when obtaining information on an individual's suitability for promotion.

(Enclosure #8, page 1)

SYSTEMS OF RECORDS

A. Contents

1. Each DoD Component or element thereof shall maintain in its records systems only such personal information as is relevant and necessary to accomplish a purpose or mission required by statute or Executive Order of the President.

2. Components shall identify the specific provision of law, or Executive Order, which provides authority for the maintenance of information in each system of records.

3. Statutory or regulatory authority to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient to have. The proponent of each system of records will evaluate each category of information in a system for both necessity and relevance. In performing this evaluation the following points will be considered:

    a. Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

    b. Specific adverse consequence of not collecting each category of information.

    c. Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

    d. Length of time that the information is needed and, where appropriate, techniques for purging parts of the record.

    e. Financial cost of information maintenance compared to risk or adverse consequence of not maintaining it.

    f. Necessity and relevance of this information to all individuals included in the system.

4. Collection will be discontinued for each category or item of information which after the above evaluation does not appear to be reasonably justifiable. Moreover, such information will be withdrawn and destroyed

(Enclosure #8, page 2)

provided it can be economically segregated from necessary and relevant information.

5. The evaluation prescribed above will be performed by each proponent of a system of records:

   a. During the design phase of a new system of records or a change in an existing system of records.

   b. Annually, prior to the republication of all system notices in the Federal Register.

B. Publication of Record System Notices

1. General. The Privacy Act of 1974 (reference (a)) requires that a notice of the existence of each system of records, as defined in subsection D, enclosure 3, be published in the Federal Register.

2. Record System Notices. DoD Components proposing new systems shall prepare system notices according to the attachment to this enclosure at least 30 days before the proposed system change may be legally implemented. Initial system notices, will be submitted to the OASD(C).

3. Change to Existing Systems Requiring Advanced Public Notice

   a. The following proposed changes to an existing system must be published in the Federal Register for public comment at least 30 days before the changes are implemented:

      (1) Those which expand the categories of individuals on whom records are maintained.

      (2) Those which add new categories of records to the system.

      (3) Those which add new categories of sources.

      (4) New or changed routine uses which involve disclosure to a new category of recipient.

      (5) Changes in procedures governing access.

   b. Notices of proposed changes to existing systems will be submitted to OASD(C).

4. Changes to Existing Systems Not Requiring Advanced Public Notice. Changes in records systems not stated

(Enclosure [illegible], page 3)

in 3., above, do not require advance publication, but must be submitted for inclusion in the annual consolidated listing of records systems. Accordingly, each DoD Component shall establish procedures to ensure that all such changes are forwarded for submission to OASD(C) by May 31 of each year for annual publication in the Federal Register.

5. Reports Concerning New and Changed Systems. Concurrently with 2. and 3., above, OASD(C) shall provide the Office of Management and Budget and the Privacy Protection Study Commission advanced notice of proposals to establish new systems or to change routine uses of existing systems.

6. DoD Component Issuances. Each DoD Component shall ensure that information contained in each system notice, as published in the Federal Register, is incorporated or otherwise published in DoD Component issuance(s) to ensure uniform system use and maintenance. DoD Components shall take immediate action to either publish a system notice, or discontinue, any system of records not contained in an internal issuance.

C. Standards of Accuracy

1. Records used by a DoD Component in making determinations about an individual will be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in any determination.

2. Prior to disseminating any record about an individual to any person other than a Federal agency unless the dissemination is made pursuant to the Freedom of Information Act (reference (c)), reasonable efforts will be made to ensure that such records are accurate, complete, timely, and relevant for agency purposes.

D. Restriction on Maintenance of Certain Records. Maintenance of a system of records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by Federal statute or by the individual concerned, unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly and to petition.

(Enclosure #8, page 4)

E. Rules of Conduct. The head of each DoD Component shall assure that persons, including government contractors or their employees, involved in the design, development, operation, maintenance or control of any system of records, as defined in enclosure 3, are informed of all requirements to protect the privacy of the individuals who are subjects of the records. The following sanctions should be emphasized to personnel:

1. There are criminal penalties for knowingly and willfully disclosing a record about an individual without the written consent or the written request of that individual, or unless disclosure is for one of the reasons listed in enclosure 7.

2. The DoD Component may be subject to civil suit for failure to comply with the Privacy Act (reference (a)).

F. Safeguarding Personal Information in Records Systems

1. Each DoD Component shall establish administrative and physical safeguards to protect each system of records from unauthorized or unintentional access, disclosure, modification or destruction. These safeguards shall apply to systems of records, in whatever medium in which personal information is processed or stored. Such safeguards shall be tailored to the requirements of each system of records.

2. Access to personal information shall be restricted to those persons whose official duties require access and the individual concerned and in accordance with enclosure 5.

3. Each DoD Component shall ensure that all persons whose official duties require access to or processing and maintenance of personal information are trained in the proper safeguarding and use of such information.

4. Personal records and documents shall be stored so as to reasonably preclude unauthorized disclosure.

5. Disposal of records containing personal information which are no longer required will be accomplished in such a manner that will prevent the contents from being disclosed (e.g. tearing or shredding the record into pieces or burial or in the case of magnetic tapes by degaussing).

Attachment 1
  Instructions for Preparation of
  Record System Notices

(Attachment to Encl. 8
page 1)

INSTRUCTIONS FOR PREPARATION OF RECORD SYSTEM NOTICES

I. GENERAL INSTRUCTIONS

A. For each system of records submit information in the sequence as shown in II., below. Show in this sequence even though an entry may not be required for all items.

B. Use keywords shown below (i.e., SYSNAME, RECORD-CATEGORY, etc.) Explanations of keywords are shown in parentheses, but do not use.

C. Do not use paragraph or subparagraph numbers or letters.

D. Do not underline any part of the text.

E. Do not use hyphenation at the end of a line or subdivide a word at the end of a line.

F. Do not reference information from other parts within the system of records being described.

G. Use all standard typewriter characters except for the following which will be used as indicated:

1. Use "+" to precede each major group keyword (e.g., plus SYSNAME, etc.).

2. Use "*" to precede each major subgroup keyword (e.g. * safeguards, etc.). The "¢" used in original Privacy Act submission instructions is no longer valid.

3. Use "$" to precede the text following each major group or subgroup headings. Do not use subparagraphs.

4. Use "%" to precede each line entry when names, addresses, etc., require a column or list format. Multiple addresses or listings within a single column are not permitted. In instances where more than one address or list is required, enter all addresses or lists in paragraph form, from left to right across the page.

5. Do not use "=" character. It is reserved for other purposes.

H. All information will be typed flush with the left margin, using the characters indicated in G above to

(Attachment to Encl. 8
page 2)

distinguish between major groupings of information and paragraphs.

I. Refer to section III for systems which may qualify for emption.

J. Number the pages separately for each draft system notice.

K. New and revised system notices shall be prepared in accordance with the initial Privacy Act submission instructions (reference (n)) as modified by this attachment. All notices are to be submitted in full (i.e. no partial system notices shall be accepted).

II. SEQUENCE OF SUBMISSIONS AND INSTRUCTIONS

A. Manual or Automated. Indicate whether the system is manual or automated. An automated system would include records processed, maintained, or both, in a machine readable medium, such as EAM Cards, computer tapes, or disks, word processing tapes and cards, etc. A manual system would include records processed, maintained, or both, in a human readable medium such as paper records in file folders, visible or vertical file cards, microfiche, roll microfilm, photographs, etc. A mechanized file which requires substantial human intervention for processing or maintenance is considered to be manual, rather than automated.

B. System Name (SYSNAME). Whenever applicable, identify the system by number and title prescribed in your files or records disposition manual. Use locally originated titles for files which are not described specifically and adequately in the manual or which are otherwise unique to the reporting office. If more than one system is covered by a file description, identify each system. If several files (separately described in your manual) are a part of a single system identify the system only (see F., below, for identification of separate files which form a system). Provide system and file title in unclassified form. Do not use abbreviations, nicknames, or acronyms unless spelled out the first time used. Place acronyms in parentheses immediately following the title.

C. Security. Specify the Defense or other security classification for the system of records if classified pursuant to the provisions of DOD 5200.1-R (reference (j)), and implementing directives. Do not cite as a

*(Attachment to Encl. 8
page 3)*

classification INTERNAL WORKING PAPER, EYES ONLY, or similar marking used for internal control or other handling purposes. If unclassified, including FOR OFFICIAL USE ONLY, state unclassified.

D. Location. If the system is maintained in a single location, provide the exact name of the office, organization, and correspondence or routing symbol. On the other hand, if it is geographically or organizationally decentralized, specify each type of organization or element that maintains a segment of the system. For example, if the system was comprised of clinical records, then medical centers and hospitals, and the National Personnel Records Center would be listed as locations. Where automated data systems encompass a central computer facility, with input/output terminals at several geographical locations, list by category each location under this heading. In all instances where multiple locations are referred to by type of organization, state that official mailing addresses are in the Department of Defense Directory in the appendix to the Component's systems notice. However, in all cases, give the official mailing address if the office maintaining the system is not listed in the Federal Register. If the address is classified, so state. Be sure to list each type of organization maintaining a segment or duplicate of the system, since maintenance by a type of organization not reported herein will constitute a violation of the Privacy Act of 1974 (reference (a)). When indicating domestic addresses, use the United States Postal Service two letter State abbreviation and the Zip Code.

E. Individual Category. (Categories of Individuals Covered by the System). The purpose of this requirement is to permit an individual to determine whether or not information on him might be in the system of records. Categories of individuals, therefore, should be stated in easily understood, non-technical terms and include all categories of individuals on whom records are maintained. Avoid using broad general descriptions, such as "all military personnel," unless the system applies to all military personnel. For example, the Joint Uniform Military Pay System (JUMPS) applies to all military personnel on active duty, while a system of absentee case files would apply only to deserters and escaped prisoners. All categories of individuals included in the system must be listed, regardless of the frequency of inclusion or the number of records involved. (All future changes to the system, which broaden or increase the categories of individuals covered, will require preparation and publication of a revised public notice in the Federal Register.)

*(Attachment to Encl. 8
page 4)*

F. Record Category. (Categories of Records in the System). Briefly describe in non-technical terms all types of records in the system. For example, under JUMPS, the types of records will include, but not be limited to, individual military pay records and substantiating documents, such as certificates for deductions and retained military pay orders and records of travel payments; financial record data folders; miscellaneous military vouchers; laundry and dry cleaning statement; copies of morning or strength reports or other rosters; and personal financial records. For automated systems, do not list source documents unless they are retained and filed by name, SSN, or other individual identifier. Instead, list the categories of information stored in the system. Be sure to include all types records in the system, regardless of their frequency or volume of accumulation, since future additions of new types of records will require preparation and publication of revised public notices in the Federal Register.

G. Authority. (Authority for Maintenance of the System). Cite the specific provision of a Federal statute or Executive Order of the President, including the title thereof, which authorizes, or provides a legal basis for, maintenance of the system. Do not cite regulations. In this connection, authority for a system may be derived from a statute or Executive Order which:

1. Explicitly authorizes or directs the component to maintain a system of records.

2. Authorizes or directs the component to perform a function, the discharge of which requires maintenance of the system of records.

(NOTE: Check with the appropriate judge advocate or legal officer for assistance in determining the statutory or regulatory basis for the system.)

H. Routine Uses. (Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses).

1. Essentially, this requirement calls for the following information in nontechnical terms:

   a. The purpose(s) for which information in the system is collected.

   b. Each category of user.

(Attachment to Encl. 8 page 5)

c. The specific use(s) made of the information by each user.

2. Each category of user and each use must be reported. Any proposed new use or category of user, or change in an existing use, which has the effect of expanding the availability of the information in the system, will require publication of a revised notice in the Federal Register. Any such proposed change in a routine use must also be described in an advanced notice in the Federal Register to permit 30 days for public comment before it is implemented. As defined by 5 U.S.C. 552a (reference (a)), the term "routine use" means with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

3. "Uses" can be distinguished from "purposes" in that "purposes" describe the objectives for collecting or maintaining information. "Uses" are the specific ways or processes in which the information is employed, including the persons or organizations to whom the record may be disclosed. For example, thepurposes for collecting information may be to evaluate an application for a veteran's benefit and to issue checks. Uses may include verification of certain information with the appropriate Military Servibe and release of check data to the Treasury Department. List under routine uses if contractors are engaged to perform a service, such as key punch, optical scan, or telecommunications in connection with the operation of an automated data system. List also Federal agencies to which personal-type information is disclosed, including automated system interfaces, and the purposes for which the disclosures are made.

4. Each proponent of a system (i.e., that office or organization proposing, directing, or otherwise responsible for the system) must prescribe the "routine" uses of the records. Routine use does not merely encompass the common and ordinary uses to which records are put, but also includes all of the proper and necessary uses regardless of frequency. For example, individual income tax returns are routinely used by the Internal Revenue Service to audit the amount of tax due and for assistance on collection of such tax by civil proceedings. They are used less often, however, for referral to the Department of Justice for possible criminal prosecution of fraud or tax evasion. Therefore, the "routine" use of such records will include referrals to the Department of Justice. In addition, description of "routine use" shall include the fact that any individual records in a system of records

BEST DOCUMENT AVAILABLE

(Attachment to Incl. 8 page 6)

may be transferred to any component of the Department of Defense. It shall be expected normally that "routine use" will include disclosure to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

I. Policy-Practice. (Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System). Describe how records in the system are managed during their life-cycle. When feasible, extract pertinent information from your files or records disposition manual.

1. Storage. In describing records storage, specify the medium in which they are maintained, such as paper records in file folders, visible or vertical file cards, computer magnetic tapes, or disks, computer paper printouts, aperture cards, microfiche, roll microfilm, photographs, video-tape, etc.

2. Retrievability. Specify how information is accessed and retrieved, such as by name, social security account number (SSAN), military service number or other identification number, classification or personal characteristics, such as fingerprint classification, voice print identifier, etc. Indicate further whether conventional or computerized indices are required to retrieve individual records from the system.

3. Safeguards. Describe what measures are taken to prevent unauthorized disclosure of the records and state the categories of individuals authorized access to the records. Specify system safeguards, such as safes, vaults, locked cabinets or rooms, guards, personnel screening, visitor registers, computer "fail-safe" systems software, etc.

(NOTE: Do not describe security safeguards in such detail as to increase the risk of unauthorized access to the records.)

4. Retention. (Retention and Disposal). State rules on how long the records are to be maintained; if and when they are moved to Federal Records Centers or to the National Archives or other designated depository; and if, when, and how they are destroyed or otherwise disposed of. Changes in this item will not normally require immediate publication of a revised public

(Attachment to Encl. 8
page 7)

notice unless they reflect an expansion in the availability of or access to the system of records.

J. Systems Manager (SYSMANAGER). (Title and Duty Address of the Agency Officials Responsible for the System). In all cases, enter the title of the official who is responsible for policies and procedures governing the system, i.e., DCS Personnel, Hq., USA and USAF; Chief of Naval Personnel; etc. If the title of the official is unknown (such as for locally evolved systems), specify the commander or office head as the responsible official. In addition, for geographically or organizationally decentralized systems, where individuals may deal directly with agency officials at each location to exercise their rights under the Privacy Act of 1974 (reference (a)), give the position or duty title of each category of official responsible for the system or a segment thereof. For example, in the case of clinical records, the entries would be: The Surgeon General, USA or USAF, or Chief, Bureau of Medicine and Surgery (USN), commanders of medical centers and hospitals, and the Director, National Personnel Records Center, 111 Winnebago St., St. Louis MO 63118. Do not include the duty address if already listed in organizational directories mentioned in D. above.

K. Notification. (Procedure Whereby Individuals Can be Notified at Their Request if the System Contains Records Pertaining to Them).

1. Indicate whether or not requests from individuals should be addressed to the above SYSMANAGER, as in J. above. If requests are to be addressed to any other officials, list them by duty or position titles.

2. Specify what information will be required from the requesting individual to determine whether or not the system contains a record about him such as full name, military status, SSN or service number, resident or nonresident, etc.

3. List by specific name, or categories, those offices which the requester may visit to obtain information on whether or not the system contains records pertaining to him.

4. For personal visits, specify what data the requester must present as proof of identity, such as a combination of full name, date and place of birth, parents' names, driver's license, medicare card, etc. Do not

(Attachment to Encl. 8
page 8)

require verification of identity for records which are disclosable under the Freedom of Information Act (reference (c)).

L. Access. (Procedures Whereby An Individual Can Be Notified At His Request How He Can Gain Access To Any Record Pertaining To Himself Contained In The System Of Records). Include the title or category of officials who can provide assistance, if those officials are other than the SYSMANAGER. If the mailing addresses are listed in the organizational directory, state that official mailing addresses are in the Department of Defense Directory in the appendix to the Component's systems notice. Specific locations and telephone numbers of offices may be indicated for unique or centralized systems.

M. Contest. (Rules For Access and Contesting Contents of Records). To comply with this requirement, merely, state: "The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER."

N. Source. (Categories of Sources of Records in the System). List by type each source of information in the system, e.g., previous employers, financial institutions, educational institutions, trade associations, automated system interfaces, etc. Specific individuals or institutions need not be identified by name. Also, do not list as a source individuals who provided information on themselves. Again, be sure to include all types, since collection of information from types of sources other than those listed will require publication of a revised public notice in the Federal Register -- before any information is collected from those sources.

III. SYSTEMS QUALIFIED AND PROPOSED FOR EXEMPTION

A. Generally, the following records may be exempted from the provisions of K., L., M., and N. of section II of this attachment (subsection (e)(4)(G), (H) and (I) of the Privacy Act of 1974 (reference (a)): records maintained by the Central Intelligence Agency; records compiled to ensure protection of the President or other officials, classified records, records required by statute to be maintained and used solely as statistical records;

(Attachment to Encl. 8 page 9)

investigatory records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent as outlined in subsection (k)(5) of the Privacy Act of 1974 (reference (a)); certain testing and examination material; and certain material used to evaluate potential for promotion in the Armed Services. All items in Section II, of this attachment will be completed for systems proposed for exemption, except for K., L., M., and N.

B. Cite the system name and specific provisions of the Privacy Act of 1974 (reference (a)), from which the system is to be exempted and the reasons therefore. Consult with the legal staff for detailed guidance for systems which may be eligible for exemption. Proponents of systems dealing with the above types of records should contact the Departmental Records Management staff (HQ DAAG-AMR; HQ USAF/DAD; Chief of Naval Operations (OP-09B1); or appropriate comparable Defense component records management staff for additional guidelines, if necessary, for preparing exemption notices for publication in the Federal Register. (Note: No system of records is exempted from the public notice requirements of the Privacy Act of 1974 (reference (a)). Failure to publish such a notice constitutes a criminal violation.

APPENDIX Q

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APPENDIX Q

DEPARTMENT OF DEFENSE FOREIGN TAX RELIEF PROGRAM

Part 1—Department of Defense Directive 5100.64

Q-000 Reprint of DoD Directive 5100.64.

June 12, 1979
NUMBER 5100.64

GC, DoD

Department of Defense Directive

SUBJECT DoD Foreign Tax Relief Program

References:
(a) DoD Directive 5100.64, "Department of Defense Foreign Tax Relief Program," August 12, 1970 (hereby canceled)
(b) DoD Instruction 2050.1, "Delegated Approval Authority to Negotiate and Conclude International Agreements," July 6, 1977
(c) DoD Directive 5000.35, "Defense Acquisition Regulatory System," March 8, 1978
(d) DoD Directive 5525.1, "Status of Forces Policies and Information," January 20, 1966

A. REISSUANCE AND PURPOSE

This Directive (1) reissues reference (a), without substantive change, to correct superseded references; and (2) defines the tax relief policy of the Department of Defense, designates the organizational element which has continuing responsibility for the overall direction of the DoD Foreign Tax Relief Program, delineates the responsibilities of other organizational elements to implement and monitor the program, and requires the preparation and maintenance of specified foreign country tax law studies in order to facilitate the institution of statistical reporting procedures.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified Command, and the Defense

Agencies (hereafter referred to as "DoD Components").

2. The policy set forth in this Directive applies to:

a. Military functions expenditures by the Department of Defense, and

b. Expenditures by nonappropriated fund activities of the Department of Defense that are subject to taxes imposed by:

(1) Foreign countries in which U.S. military forces are regularly stationed (other than attache and other military personnel assigned to a U.S. diplomatic mission); and

(2) Any other foreign country in which all or most U.S. defense activities, in a collective sense, are conducted in the interest of the common defense or otherwise significantly improve the military security of that country.

3. The policy set forth in this Directive also applies to Military Assistance Program (MAP) expenditures in all countries.

C. DEFINITIONS

1. Regardless of how a charge is denominated in foreign law or regulation, the words "tax" and "taxes" include all direct or indirect foreign customs duties, import and export taxes, excises, fees and other charges imposed at the national, local or intermediate level of a foreign country other than charges for services rendered or for other consideration received.

2. For example, taxes include but are not limited to purchase tax, sales tax, use tax, gross receipts tax, stamp tax, transfer tax, transaction tax, turnover tax, value added tax, service tax, trade tax, business tax, license tax, transportation tax, circulation tax, luxury tax, possession tax, production tax, registration tax, consumption tax, gasoline tax, real property tax, personal property tax, and gross income tax.

3. The word "relief" includes any method, technique, or procedure by which the ultimate economic burden of a tax on DoD funds may be avoided or otherwise remedied, such as exemption, refund, or drawback.

D. POLICY

It is the policy of the Department of Defense to secure, to the maximum extent practicable, effective relief from all foreign taxes wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the Department of Defense (including MAP appropriations) or under the control of its nonappropriated fund activities. In those cases in which the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a *de minimis* matter, or in which the administrative burden of securing effective relief from a tax in a particular instance would be out of proportion to the amount of the relief obtained, tax relief shall be considered impracticable.

E. RESPONSIBILITIES

1. The General Counsel of the Department of Defense shall:

a. Provide overall supervision and direction of the DoD Foreign Tax Relief Program.

b. Resolve any significant issues relating to the program.

c. Designate those countries that come within subparagraph B.2.b.(2) of this Directive.

d. Direct the preparation of country tax law studies for countries not within the scope of subsection B.2. of this Directive.

e. Designate the DoD member of the Inter-Agency Committee on Foreign Tax Relief, established by the Department of State.

2. The Assistant Secretary of Defense (International Security Affairs) shall monitor the negotiation and conclusion of international agreements subject to the Secretary's approval authority under DoD Instruction 2050.1

(reference (b)), to ensure that such agreements are compatible with the policy set forth in this Directive and any implementing guidance concerning that policy issued by the General Counsel of the Department of Defense.

3. The Chairman, Defense Acquisition Regulatory Council, shall coordinate with the General Counsel of the Department of Defense before the issuance, amendment, or revision of any portion of the Defense Acquisition Regulatory System (or regulation, directive, circular, or other publication within the scope of DoD Directive 5000.35 (reference (c)) that pertains to the implementation of the DoD Foreign Tax Relief Program.

4. The Assistant Secretary of Defense (Comptroller) shall perform such fiscal functions as may be required to implement the DoD Foreign Tax Relief Program, including advice and assistance in the institution of procedures for collecting data, compiling reports, and performing internal audits.

5. The Secretary of each of the Military Departments and the Director of each of the Defense Agencies shall issue instructions or regulations that charge a single office within the respective Military Department or Defense Agency (referred to as the "Cognizant Office") with continuing responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within such Department or Agency. Such instructions or regulations shall delegate to the Cognizant Office authority commensurate with its responsibility.

6. Commanders of Unified Commands, as appropriate, shall promulgate management procedures to guide and coordinate the administration of the DoD Foreign Tax Relief Program throughout their respective area commands.

7. For each foreign country that comes within the scope of subsection B.2. of this Directive, a single Military Commander shall be designated by the Commander of the Unified Command. The designated Military Commander shall be the same designated under the procedures in subsection IV.C. of DoD Directive 5525.1 (reference (d)). The designated Military Commander shall:

a. Make and maintain a current country tax law study in accordance with section F. of this Directive.

b. Be the single point of contact for U.S. contracting officers and activities for the investigation and resolution of specific matters that relate to the foreign tax relief program within the country for which the Military Commander is designated and for the forwarding of major problems affecting that program through proper channels to the General Counsel of the Department of Defense.

c. Provide liaison with the responsible U.S. diplomatic mission on current tax relief problems and, where appropriate, with local foreign tax authorities.

F. COUNTRY TAX LAW STUDIES

1. The taxes covered by each country tax law study shall be limited to those which in the absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures, even as a *de minimis* matter. (All such taxes are hereafter referred to as "applicable taxes.") The formats of the studies for all countries shall be similar within each Unified Command insofar as practicable, and designed to facilitate statistical reporting procedures. The studies shall be prepared and maintained with a view to the practical utilization of the studies by U.S. contracting officers and activities for purposes of making reliable estimates of the total amount of taxes applicable to any particular contract and the amount thereof for which tax relief is available.

2. Each country tax law study shall consist of the following:

a. A general survey of all applicable taxes, together with translations, as appropriate, of the salient features of the law or regulations imposing those taxes.

b. For each applicable tax, a summary statement containing: its name; its rate (or rates); the taxing authority (national, provincial, or municipal); the legal incidence of the tax (the nature of the taxpayer or other entity liable for the payment of the tax to the taxing authority under the law of the country); its description (including the base or bases on which the tax is imposed); the applicability of the tax to various types of contracts (supplies, services, or construction) in the event the tax is applicable to only one or several of such types of contracts; the applicability of the tax to the prime contract, as well as to any subcontracts or purchase orders issued by the prime contractor or subcontractor; the applicability of the tax to contractor and subcontractor personnel; the variation, if any, of the applicability of the tax depending upon the domicile of the contractor or contractor personnel, such as United States, host country, or third country; any applicable exemptions or deductions of significance; and the method of collection of the tax.

c. The basis upon which it is concluded that each applicable tax, in absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures; and any evidence of the degree to which its ultimate economic burden would, in absence of tax relief, be borne by the U.S. Government rather than be absorbed by others.

d. The substantive tax relief, if any, from each applicable tax that is available to the U.S. Government either by international agreements in force or under the tax law or other regulation of the country; the procedures which may be used to obtain any such relief; the requirement, if any, for the issuance of a tax exemption certificate by the military procuring agency or by an agency of the country to secure an exemption; the entitlement, if any, of the taxpayer to interest on any tax refund made by the host country; the credits, if any, that may be available against any other taxes otherwise payable by the taxpayer resulting from the payment of the tax under analysis; the approximate amount of the tax that should be involved in a particular case, if such can be estimated, taking into account the costs of filing a claim for refund by a contractor to warrant filing such a claim; and a brief narration of any significant problems which have occurred in attempting to obtain relief in particular cases.

e. A conclusion with regard to the adequacy of current tax relief measures; and such recommendations as may be appropriate for more efficient implementation of the policy set forth in this Directive.

3. Appended to each country tax law study shall be a verbatim quotation of all provisions relating to tax relief afforded by the country that are contained in international agreements in force.

4. One copy of each country tax law study shall be forwarded to the General Counsel of the Department of Defense and to each of the Cognizant Offices of the

Military Departments and Defense Agencies within 30 days after its approval by the designated Military Commander. The information contained in the studies shall be disseminated by the Cognizant Offices to U.S. contracting officers and activities when required.

5. Country tax law studies shall be subject to continuing review. When there is a significant change in country tax laws, regulations, tax relief procedures, or in pertinent international agreements in force, the corresponding revision shall be promptly forwarded by the designated Military Commander to each of the offices referred to in subsection F.4.

G. INFORMATION REQUIREMENTS

1. The reporting requirement contained in section F. relating to the submission of country tax law studies and revisions thereof is assigned Report Control Symbol DDSD(AR) 1036.

2. Each January a summary of significant activities during the preceding year in implementation of the DoD Foreign Tax Relief Program shall be furnished by the Heads of Cognizant Offices to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Cognizant Office to discharge its responsibility for supervising and monitoring the implementation of the foreign tax relief program within its Military Department or Defense Agency, and for disseminating the information contained in country tax law studies to U.S. contracting officers and activities. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC(A)1198.

3. Each January a summary of significant activities during the preceding year of the administration of the foreign tax relief program shall be furnished by Commanders of the Unified Commands to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Unified Command to discharge its responsibility to supervise and coordinate the preparation and maintenance of country tax law studies. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC(A)1199.

H. EFFECTIVE DATE

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel of the Department of Defense within 120 days.

CW Duncan Jr

C. W. Duncan, Jr.
Deputy Secretary of Defense

DEPARTMENT OF DEFENSE FOREIGN TAX RELIEF PROGRAM

Part 2—Implementation and Administration of DoD Directive 5100.64

Q–201 Implementation. DoD Directive 5100.64 has been implemented by the following regulations and instructions:

Department of the Army Regulation AR 27–70;
Department of the Navy Instruction SECNAVINST 5840.5;
Department of the Air Force Regulation AFR 110–18;
Defense Communications Agency Instruction 100–50–6;
Defense Contract Audit Agency Regulation 5100.3;
Defense Mapping Agency Instruction 5500.2;
Defense Nuclear Agency Instruction 5100.64; and
Defense Supply Agency Regulation 5500.6.

Pursuant to 11–000(d), the applicable implementing regulation or instruction should be consulted by contracting activities before the initiation of foreign acquisition.

Q–202 Administration of Program Under Unified Commands. The following Unified Commands have issued management procedures to guide and coordinate the administration of the foreign tax relief program throughout their respective area commands:

Commander in Chief, European Command (USCINCEUR) EUCOM DIRECTIVE 45–8;

Commander in Chief, Atlantic Command (CINCLANT) CINCLANTINST 5840.2A;

Commander in Chief, Pacific Command (CINCPAC) CINCPACINST 5840.2B; and

as regards Canada and Greenland, Commander, Aerospace Defense Command (ADC) ADC Regulation 110–1.

These issuances implement subsection E.7. of DoD Directive 5100.64 (*see Part I of this Appendix Q*) and apply to the contracting activities within the geographical areas assigned to the respective Unified Commands.

DEPARTMENT OF DEFENSE FOREIGN TAX RELIEF PROGRAM

Part 3—Designated Commanding Officers

Q-301 Designated Commanding Officers. For the following foreign countries and areas a single military commander as indicated has been designated pursuant to subsection E.7. of DoD Directive 5100.64 to make and maintain a current country tax law study, to serve as a single point of contact for U. S. contracting officers and contracting activities for the investigation and resolution of specific foreign tax relief matters, and to serve as a point of liaison with the responsible diplomatic mission and local foreign tax authorities.

Country or Area	**Designated Commanding Officer**
Australia	Commander in Chief, Pacific Rep., Australia
Azores	Commander, U.S. Forces, Azores
Bahrain	Commander in Chief, U.S. Naval Forces, Europe
Belgium	Commander in Chief, U.S. Army, Europe
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda
Canada	Commander, Aerospace Defense Command
Caribbean Islands (including Bahamas)	Commander, Antilles Defense Command
Denmark	Commander in Chief, U.S. Air Forces, Europe
Ethiopia	Commander in Chief, U.S. Army, Europe
France	Commander in Chief, U.S. Army, Europe
Germany	Commander in Chief, U.S. Army, Europe
Greece	Commander in Chief, U.S. Air Forces, Europe
Greenland	Commander, Aerospace Defense Command
Iceland	Commander, Iceland Defense Force
Iran	Commander in Chief, U.S. Army, Europe
Italy	Commander in Chief, U.S. Naval Forces, Europe
Japan	Commander, U.S. Forces, Japan
Korea	Commander, U.S. Forces, Korea
Luxembourg	Commander in Chief, U.S. Army, Europe
Morocco	Commander in Chief, U.S. Naval Forces, Europe
Netherlands	Commander in Chief, U.S. Air Forces, Europe
New Zealand	Commander, U.S. Naval Support Forces, Antarctica
Norway	Commander in Chief, U.S. Air Forces, Europe
Philippines	Commander in Chief, Pacific Rep., Philippines
Portugal	Commander in Chief, U.S. Naval Forces, Europe
Spain	Commander in Chief, U.S. Air Forces, Europe
Taiwan	Commander, U.S. Taiwan Defense Command
Thailand	Commander, U.S. Military Assistance Command, Thailand
Turkey	Commander in Chief, U.S. Air Forces, Europe
United Kingdom	Commander in Chief, U.S. Air Forces, Europe

APPENDIX R

Appendix R reprints 41 CFR Part 50-206 and is not codified in this Supplement.

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For historical research for the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes. No amendments were published in the FEDERAL REGISTER during the period July 1, 1973 to July 1, 1974. For the period July 1, 1974 to July 1, 1979, see the section concerning "Primary Publication in the CFR" on page vii of the 1979 edition.

As an aid to the user, the Office of the Federal Register has prepared the following list of DAR sections, paragraphs, subparagraphs, and appendices that appear to be affected or amended by DPC or DAC circulars. (Beginning with DAC 76-20, July 1, 1980, amendments have appeared in replacement page format in the FEDERAL REGISTER.)

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9-703.1 (add)	9:79, 9:80.
9-703.2 (add)	9:80.
9-703.3 (add)	9:80, 9:81.
9-703.4 (add)	9:81.
9-703.5 (add)	9:81, 9:82, 9:83.
9-703.6 (add)	9:83 through 9:88, 9:89.
9-704 (add)	9:89.
Volume III	
18-908	18:58.
21-112.1	21:8-A, 21:8-B.

DAC 76-30

(46 FR 53076, October 28, 1981)

DAR paragraph	Replacement pages
Volume I	
1-332	1:74.

DAC 76-30—Continued

(46 FR 53076, October 28, 1981)

DAR paragraph	Replacement pages
1-340 [reserved]	1:77-A.
1-406	1:83.
1-1201	1:182.
1-1202	1:182, 1:183.
2-201	2:7, 2:9, 2:17.
3-201	3:5.
3-501	3:62, 3:66, 3:70.
3-607.3	3:85.
3-705	3:107, 3:108.
Section III, Part 14 (add)	3:194.
3-1400 (add)	3:194.
3-1401 (add)	3:194, 3:195.
3-1402 (add)	3:195, 3:196.
3-1403 (add)	3:196, 3:197, 3:198.
3-1404 (add)	3:198.
3-1405 (add)	3:199.
3-1406 (add)	3:199.
4-106.1	4:4.
4-107.4	4:8-B.
5-102.1	5:4.
5-207	5:23.

Volume II

DAR paragraph	Replacement pages
7-104.36 (add)	7:88, 7:89.
7-104.78 [reserved]	7:123.
7-204.52 [reserved]	7:204.
7-204.66 [reserved]	7:205.
7-303.53 [reserved]	7:238.
7-303.68 [reserved]	7:241.
7-403.48 [reserved]	7:263.
7-403.64 [reserved]	7:266.
7-504.12 [reserved]	7:270.
7-603.61 (delete)	7:314-D.
7-603.62 (delete)	7:314-D.
7-606.32 (delete)	7:332.
7-606.33 (delete)	7:332.
7-705.27 [reserved]	7:369.
7-705.33 (delete)	7:369.
7-705.34 (delete)	7:369.
7-705.35 (delete)	7:369.
7-902.45 [reserved]	7:391.
7-1903.47 [reserved]	7:456.
7-1910.35 [reserved]	7:464.
7-2003.91 (add)	7:526-I.
7-2102.11	7:537.
7-2102.12 [reserved]	7:537.
7-2102.13 [reserved]	7:537.
7-2102.14 [reserved]	7:537.
7-2102.15 [reserved]	7:537.
13-301	13:8, 13:9.
15-205.3	15:13, 15:14.
15-205.35	15:37, 15:38, 15:39.

Volume III

DAR paragraph	Replacement pages
18-109	18:6.
21-125	21:18, 21:19.
Section XXI, Part 4 (add)	21:30.
21-400 (add)	21:30.
21-401 (add)	21:30.
24-205.3	24:16.
B-201	B:6.
B-306.1	B:15.
C-201	C:6.
C-306.1	C:13.
F200.1195	F209, F210.
F200.1342	F211, F212.

DAC 76-31

(47 FR 9399, March 5, 1982)

Volume I

DAR paragraph	Replacement pages
3-404.3	3:32
3-605.2	3:79-A
3-605.3	3:81
3-709	3:109

Volume II

DAR paragraph	Replacement pages
7-104.35	7:82, 7:83, 7:84, 7:84-B through 7:84-D, 7:85, 7:86 through 7:86-D, 7:87
7-1400	7:420
7-1401	7:420
7-1401.3 (deleted) Reserved	7:420
7-1401.4	7:420
7-1401.5	7:420, 7:421, 7:421-A
7-1401.6	7:421-A, 7:421-B
7-1401.8	7:421-B
7-1401.9 (deleted) Reserved	7:421-B
7-1401.10 (deleted) Reserved	7:421-B
7-1401.14 (add)	7:422
7-2003.60	7:520, 7:520-A
10-202	10:15
15-205.16	15:26
15-205.51 (add)	15:52, 15:52-A

Volume III

DAR paragraph	Replacement pages
16-206.1	16:14, 16:15
16-401.2	16:18, 16:19
18-402.1	18:16
19-208.2	19:10
19-213.1	19:12
19-301.2	19:15
19-403.1	19:18
20-503	20:27
22-702 (add)	22:28
22-703 (formerly 22-702)	22:28
22-704 (formerly 22-703)	22:28
22-704 (b) and (c) (add)	22:28-A, 22:28-B
23-103 (add (a)(xi))	23:5
23-108	23:8-A
25-103	25:2, 25:2-A
E-503	E:42-A
E-503.1	E:42-B
E-503.2	E:42-B, E:43
E-511.2	E:49
E-511.3	E:49, E:53, E:54, E:55
E-517	E:57
E-530 (add)	E:65-B
E-530.1 (add)	E:65-B, E:65-C
E-530.2 (add)	E:65-C
E-530.3 (add)	E:65-C
E-530.4 (add)	E:65-C, E:65-D
E-530.5 (add)	E:65-D
E-530.6 (add)	E:65-D
E-530.7 (add)	E:65-D
E-530.8 (add)	E:65-D
I-104 (add (a)(6))	I:3
I-401	I:19
I-501	I:23
I-601	I:26
I-702 (Tables 3 and 4)	I:29, I:30, I:31
I-702 (Table 5 deleted)	I:32 removed

DAC 76–32

(47 FR 37084, August 25, 1982)

DAR paragraph	Replacement pages
Volume I	
1–342(d)	1:77–B.
Section III, Part 13 (Title)	3:190.
3–1300 (Title)	3:190.
3–1301 (add)	3:193.
3–1301.1 (add)	3:193.
3–1301.2 (add)	3:193, 3:193–A.
3–1301.3 (add)	3:193–B.
3–1301.4 (add)	3:193–B.
3–1301.5 (add)	3:193–C.
3–1301.6 (add)	3:193–C.
Volume II	
13–303	13:10.
15–205.50	15:52, 15:52–A.
Volume III	
Appendix N	N:1, N:14, N:30, N:31, N:34, N:38, N:39, N:44, N:46, N:47, N:50, N:53 through N:61, N:82 through N:88, N:90 through N:93, N:95, N:96, N:99, N:100, N:102, N:104 through N:116.

DAC 76–33

(47 FR 37129, August 25, 1982)

DAR paragraph	Replacement pages
Volume I	
1–201.14	1:17.
2–201	2:11.
2–501	2:43.
2–503.1	2:45.
3–302	3:19.
3–303	3:20.
3–501	3:61, 3:62, 3:63, 3:66–C, 3:70, 3:70–A.
3–608.2	3:92.
3–809	3:155, 3:157, 3:157–A.
3–1000	3:165.
3–1001	3:165.
3–1002	3:165.
3–1003.1	3:165, 3:166, 3:167.
3–1003.2	3:167.
3–1004 (add)	3:167, 3:168, 3:169.
3–1005 (add)	3:169, 3:170.
3–1006 (add)	3:170 (3:171 and 3:172 removed).
6–504.2	6:24.
Volume II	
7–603.60	7:314, 7:314–A, 7:314–B, 7:314–C.
7–2003.14	7:502–A, 7:502–B.
15–201.3	15:7, 15:8.
15–201.6	15:9, 15:9–A.

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(47 FR 37129, August 25, 1982)

DAR paragraph	Replacement pages
15–205.2	15:12.
15–205.11	15:24.
15–205.17	15:27–A.
15–205.31	15:32.
Volume III	
18–402.2	18:17.
20–502	20:27.
20–506	20:28.
22–501.5	22:17.
22–503.1	22:18.
22–503.2	22:19.
H–502	H:35, H:36.
H–606.1	H:47.
H–606.3	H:50, H:50–A.
J–502	J:12.

CHANGES TO DAR SUPPLEMENT NO. 2—NOT IN CFR

	Page
S2–101.1	S2–1.
S2–102.1	S2–2.
S2–102.2	S2–5.
S2–301	S21–5.
S2–301.2	S2–15

DAC 76–34

(47 FR 37380, August 26, 1982)

DAR paragraph	Replacement pages
Volume I	
1–109.2	1:7, 1:8.
1–109.3	1:8.
1–109.4	1:8, 1:8-A.
1–319 (deleted) Reserved	1:34, 1:37 (1:35 and 1:36 removed).
1–701.1	1:104, 1:107.
1–701.5	1:111.
1–703	1:116-A.
1–704.1	1:120.
1–704.3	1:122-B.
1–705.4	1:128.
1–706.3	1:142-C.
1–707.1	1:146.
1–707.2	1:146-B, 1:148.
1–800	1:150.
1–805.4 (deleted) Reserved	1:158.
2–201	2:11.
3–501	3:66-C, 3:67.
3–608.2	3:90.
3–801.2	3:111.
3–807.4	3:126.
6–001.5	6:2.
6–803.2	6:37.
6–1305.6	6:56.
6–1310.3	6:59, 6:60.
6–1403.2	6:69.
6–1406.1	6:74.
6–1406.5	6:118.

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(47 FR 37380, August 26, 1982)

DAR paragraph	Replacement pages
6-1406.6	6:119.
6-1406.7	6:130, 6:133
Volume II	
7-104.3	7:32.
7-104.11 (deleted) Reserved	7:51.
7-104.14	7:52-B, 7:52-D, 7:53, 7:53-B, 7:54-A, 7:54-B.
7-204.11 (deleted) Reserved	7:194.
7-303.4 (deleted) Reserved	7:231.
7-403.4 (deleted) Reserved	7:259.
7-602.28 (deleted) Reserved	7:288.
7-605.32 (deleted) Reserved	7:327.
7-607.17 (deleted) Reserved	7:339.
7-607.26 (deleted) Reserved	7:339.
7-702.36 (deleted) Reserved	7:360.
7-703.30 (deleted) Reserved	7:363.
7-901.24 (deleted) Reserved	7:388.
7-1909.12 (deleted) Reserved	7:461.
7-1909.25 (deleted) Reserved	7:461.
7-2003.23	7:507.
7-2101.24 (deleted) Reserved	7:535.
15-205.51	15:52-B
Volume III	
18-402.3	18:18, 18:18-A.
Section XXI, Part 4 (deleted)	21:30 removed.

DAC 76-35

(47 FR 37436, August 26, 1982)

DAR paragraph	Replacement pages
Volume I	
1-329.1	1:65, 1:71.
1-329.2 (deleted)	1:65.
1-329.3 (deleted)	(1:66 through 1:70 removed).
1-329.4 (deleted)	
Volume III	
Appendix L, Table of Contents	1.
Appendix L (Reprint of DoD Directive 5400.7 and DoD Regulation 5400.7-R).	L:1 through L:74.

DAC 76-36

(47 FR 37476, August 26, 1982)

DAR paragraph	Replacement pages
Volume I	
1-109.2	1:8.
1-340	1:77-A.
1-406	1:82.
1-601.1	1:90.
1-603.1	1:91.
1-603.2	1:91.
1-603.3	1:91.
1-603.4	1:91-A, 1:93.

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(47 FR 37476, August 26, 1982)

DAR paragraph	Replacement pages
1-607	1:98.
1-609.6	1:100.
1-702	1:116.
1-707.1	1:146.
1-707.2	1:146-B, 1:147, 1:148.
1-905.3	1:162.
1-906	1:165.
2-201	2:7, 2:17.
2-407.3	2:36, 2:37.
2-407.5	2:38
2-407.6	2:38
Section III, Table of Contents	4 through 8.
3-501	3:62, 3:70
Section IV, Table of Contents	1through 5.
Volume II	
7-104.14	7:52-B, 7:53, 7:53-A, 7:53-B, 7:54-B.
7-104.78	7:123, 123-A.
7-204.66	7:205.
7-303.68	7:241.
7-403.64	7:266.
7-603.61	7:314-D.
7-606.21 (deleted) Reserved	7:332.
7-606.32	7:332.
7-705.33	7:369.
7-705.34	7:369.
7-902.45	7:391.
7-2003.35	7:512.
8-101.15	8:3.
13-301	13:7, 13:8.
3-306.5	13:13.
13-312 (Index of IPE Handbooks).	13:17 through 13:19 (next page is 13:21).
Volume III	
24-101.10	24:2.
24-205.3	24:16, 24:17.
Appendix B, Table of Contents	1, 2.
B-102.11	B:3.
B-306	B:14, B:15.
B-316	B:19.
B-402	B:21.
B-403	B:21.
Appendix C, Table of Contents	2.
C-102.11	C:3.
C-306	C:11, C:12.
E-603.3	E:68.
E-611	E:74.
E-613	E:74
E-614	E:74, E:75
E-615	E:75.
E-616	E:75.
E-617	E:75.
E-617.1	E:76.
E-617.4	E:76.
E-617.5	E:76-A.
E-623	E:79.
Appendix F, Table of Contents	2, 5 and 6
F-100.294	F64-K, F64-L.
F-100.295	F64-M, F64-N.
F-200.1131	F202 (next page is F204-A).
F-200.1140-1 (deleted)	F203 (page removed).
F-200.1140-1 (reverse) (deleted)	F204 (page removed).